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***Case No COMP/M.6455 -
SCA / GEORGIA-
PACIFIC EUROPE***

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**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) in conjunction with Art 6(2)
Date: 05/07/2012

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EUROPEAN COMMISSION

Brussels, 5.7.2012
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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sir/Madam,

**Subject: Case No COMP/M.6455 - SCA/GEORGIA-PACIFIC EUROPE
Commission decision pursuant to Article 6(1)(b) in conjunction with
Article 6(2) of Council Regulation No 139/2004¹**

- (1) On 15 May 2012 the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking Svenska Cellulosa Aktiebolaget SCA AB ("SCA", Sweden) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of Georgia-Pacific LLP's ("Georgia Pacific", United States) European consumer tissue business ("GPE") by way of purchase of shares and assets.² SCA is designated hereinafter as the "Notifying Party" and together with GPE as "the Parties".

¹ OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

² Publication in the Official Journal of the European Union No C 144, 23.5.2012, p. 10.

I. THE PARTIES

- (2) SCA is a global hygiene and paper company that develops, produces and markets personal care products, tissue, publication paper and solid wood products. In Europe SCA supplies a range of consumer tissue ("CT") products under both its own brands which differ from country to country and also to retailers for their own retailer brands.³ SCA is also a supplier to the Away-From-Home ("AFH") sector where it supplies products under the *Tork* brand as well as unbranded products.⁴
- (3) GPE is the European business of the American company Georgia-Pacific LLP which is itself part of the privately held Koch Industries. GPE manufactures a range of CT products under its own brands, which differ from country to country, and private labels for retailers. GPE also supplies the AFH sector under the *Lotus Professional* brand and unbranded products. GPE also supplies a range of cotton make up remover products under the *Demak'Up* brand.

II. THE OPERATION AND THE CONCENTRATION

- (4) In 2011 Georgia-Pacific decided to divest its European tissue business. The Finnish company Metsä Tissue OY licensed GPE's Russian consumer brands, while Lucart purchased the entire Italian tissue business. GPE's joint venture in Turkey was sold to its joint venture partner. SCA's binding offer for GPE (excluding Italy and Turkey) represents the final stage of this process.⁵
- (5) On 7 February 2012, SCA entered into a Sale and Purchase agreement to acquire GPE's consumer product business by way of purchase of shares and assets. After the completion of the proposed transaction, SCA will acquire all the shares and assets of GPE and will therefore have sole control over GPE.
- (6) The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. EU DIMENSION

- (7) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁶ (SCA: EUR 11 444 million, GPE: [...] million). Each of them has an EU-wide turnover in excess of EUR 250 million (SCA: EUR [...] million, GPE: EUR [...] million), but they do not achieve more than two-thirds of their aggregate EU-

³ The category "Consumer Tissue" includes products such as toilet paper, household towel, hanky/facials and napkins that are sold, in general, to retailers to be purchased by consumers.

⁴ The category "Away-From-Home" includes all products supplied to hotels, restaurants and catering firms and other corporate customers. The unbranded AFH products do not carry the *Tork* or *Lotus Professional* brand. These sales are made under plain packaging or might be sold under the brand of a distributor.

⁵ [...], GPE decided to close its Romanian operations.

⁶ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C 95, 16.4.2008, p. 1).

wide turnover within one and the same Member State. The notified operation therefore has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

IV. RELEVANT MARKET AND COMPETITIVE ASSESSMENT

Introduction

- (8) The Parties produce and supply converted tissue products for the CT and AFH sectors in the EEA.⁷
- (9) The production of tissue products involves two main steps: (i) the making of paper and (ii) the conversion of this paper into tissue products.
- (10) The making of paper involves treating the pulp (or alternatively, waste paper) in order to form a liquid base stock (1% fibre and 99% water), which is then dried by the paper machines. These paper machines form large rolls of paper called "parent reels".
- (11) The conversion of paper consists of unwinding the parent reel, embossing, decorating or perforating the paper and then transforming it into rolled products (such as toilet paper and household towel) or folded products (like napkins). Different converting machines are required for rolled and for folded products.
- (12) The activities of SCA and GPE overlap and give rise to affected markets in relation to the sale of parent reels (IV.1), the supply of certain AFH products (IV.2.) and the supply of certain CT products (IV.3.). Each of these product groups will be treated separately in the assessment below.

IV.1. PARENT REELS

- (13) Parent reels are large sheets of tissue paper from which converted products (CT and AFH) are made. A range of final tissue products can be produced from the same parent reels, irrespective whether they are CT or AFH products.
- (14) The Parties produce parent reels, mainly for internal consumption, but sell excess production to third party tissue manufacturers and converters.⁸ Parent reels are sold both to integrated and non-integrated tissue manufacturers.⁹

⁷ The distinction between CT and AFH has been confirmed by a number of Commission precedents, for example, Case COMP/M.2097 *SCA/Metsä Tissue* (para. 17) or Case COMP/M.4533 *SCA/P&G* (para. 11).

⁸ Likewise, the Parties purchase parent reels when their own supplies are inadequate to meet their demand.

⁹ Integrated tissue manufacturers produce parent reels, whereas non-integrated tissue manufacturers do not produce parent reels but only have converting machines. As such, non-integrated tissue manufacturers need to purchase parent reels from third parties. The market investigation confirmed that even integrated companies often buy parent reels to manage specific situations such as reduction of own parent reel production due to maintenance - see for example reply to question 14 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Consumer Tissue Competitors - France (Q. 14), dated 16 May 2012.

IV.1.1 Relevant product market

- (15) The Parties submit, in line with the definition in the *Kimberly-Clark/Scott Paper* decision,¹⁰ that parent reels constitute a separate product market. The Commission, in its previous decisions, followed this definition and considered the relevant market to be the supply of parent reels to third parties.¹¹
- (16) The Parties further put forward that most parent reels are standard grade products which can be easily sourced from a range of different suppliers.¹²
- (17) In the market investigation the majority of customers and competitors in both the CT and AFH categories considered the supply of parent reels to third parties to constitute a relevant product market. As a result, the supply of parent reels shall be considered a relevant product market for the assessment of this transaction.

IV.1.2 Relevant geographic market

- (18) The Commission has previously considered that the geographic market for the parent reels is (at least) EEA-wide.¹³ The Parties consider that the relevant geographic market is at least EEA-wide and probably broader, since parent reels are sold at similar prices across the EEA, there are no tariffs or barriers to trade, transportation costs for parent reels are much lower than for the finished products and there are imports from Asia.
- (19) The market investigation has suggested that the geographic market for parent reels is EEA-wide. According to the market investigation parent reels are regularly transported and traded all over the EEA.
- (20) The respondents to the market investigation explained that in surplus countries, parent reels are sold to customers across the EEA so as to maximise the utilisation of installed capacity and therefore minimise unit costs of production.¹⁴
- (21) Based on the above the relevant geographic market for supply of parent reels is considered to be EEA-wide for the purposes of analysing the effects on competition of the notified operation.

¹⁰ Case COMP/M.629 *Kimberly-Clark/Scott Paper*.

¹¹ Case COMP/M.2097 *SCA/Metsä Tissue* (para. 16); Case COMP/M2522 *SCA/CarstoInvest* (para. 14) and Case COMP/M.4533 *SCA/P&G* (para. 10).

¹² Although there are variations in the characteristics of parent reels, around 85% of them are of standard quality; for the remainder, manufacturers can compensate for the differences in quality at the converting stage of the manufacture (Form CO, page 33).

¹³ Case COMP/M.2097 *SCA/Metsä Tissue* (para. 35) and Case COMP/M.2522 *SCA/CarstoInvest* (para. 21).

¹⁴ See reply to question 15.1 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to consumer tissue competitors - France (Q. 14), dated 16 May 2012.

IV.1.3 Competitive assessment

- (22) The Parties overlap in the supply of parent reels. Post transaction the merged entity will achieve a market share of [20-30]% in the supply of parent reels to third parties in the EEA. In addition, the Parties' activities in parent reels give rise to a number of vertically affected markets, since both companies are active downstream in the production of converted tissue products (CT and AFH) with important market shares in a number of Member States.
- (23) The market investigation did not show concerns as regards the horizontal and vertical overlaps stemming from the Parties' presence in parent reels. First, with regards to the horizontal overlap, there still exist a number of important competitors in the supply of parent reels, such as Sofidel ([10-20]%), ICT ([0-5]%) and Metsä ([0-5]%).
- (24) As regards the vertical links, the market investigation revealed that there is overcapacity in the market for parent reels, with almost all tissue producing companies, including vertically integrated ones, selling parent reels to external converters.¹⁵ The Parties would therefore not be able to limit supply or charge increased prices for parent reels as these can easily be sourced from a range of different suppliers.
- (25) Moreover, the market investigation indicated that an important number of market players already have a vertically integrated business model and therefore the merged entity would not be able to limit access to parent reels for these competitors in the market.
- (26) In view of the above, the Commission considers that the proposed transaction does not raise serious doubts as to its compatibility with the internal market with respect to parent reels in the EEA.

IV.2. AWAY FROM HOME

IV.2.1 Relevant product market

- (27) In its previous decisions the Commission decided that AFH products constitute a separate product market from CT due to the different customer base and distribution channels.¹⁶ The Commission also observed that the quality as well as the importance of brands differs between AFH and CT products.¹⁷
- (28) In previous decisions¹⁸ the Commission identified the following product markets within the AFH category: (i) toilet tissue; (ii) hand wiping and drying ("hand wiping"); (iii) general wiping/object wiping; (iv) health care¹⁹ and (v) napkins. In the same precedent

¹⁵ See replies to question 9 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Away from Home Competitors - Belgium (Q. 38) and UK & Ireland (Q. 36), dated 16 May 2012.

¹⁶ Case COMP/M.2097 *SCA/Metsä Tissue* (para. 17).

¹⁷ Case COMP/M.629 *Kimberly-Clark/Scott* (paras. 32-33).

¹⁸ Case COMP/M.2097 *SCA/Metsä Tissue* (para. 34).

¹⁹ For example examination couch covers, patient washcloths etc.

the Commission concluded that the distinction between branded and non-branded products, which was relevant for the CT category, was not applicable to AFH products.

- (29) The Parties agreed with the above delineation of the product market and have presented their market shares in the following segments:
- Toilet paper;
 - Hand wiping (HW);
 - Object wiping (OW);
 - Health care;
 - Napkins;
 - Other AFH products.²⁰
- (30) The Parties however presented a number of arguments with respect to the delineation of product market for hand wiping which were not analysed by the Commission in its previous decisions concerning this sector. They also advanced a number of arguments in support of their submission that branded and non-branded AFH products should be considered as forming part of one and the same AFH market. These arguments are analysed below.

Hand wiping

- (31) As far as hand wiping is concerned, the Parties submitted that relevant market should consist of tissue, textile, jet air dryers as well as traditional dryers. The Parties acknowledged that such a product market definition has not been recognized by the Commission in previous decisions (for example *SCA/Metsä Tissue*), but they consider that the market has developed since that time for the following reasons.
- (32) First, the Parties observe that hot air dryers and textile hand wiping products have always been significant competitive constraints on AFH hand wiping tissue suppliers.
- (33) Second, the Parties put forward that the main development of the hand wiping market since the *SCA / Metsä* decision has been the introduction of jet air dryers ("JADs"). These devices were invented by Mitsubishi Electric in the nineties and then developed by a company called Dyson. According to the Parties, Dyson started to produce Dyson Airblade JADs in 2006 and successfully managed to market its products at the expense of AFH tissue and traditional hot air dryers. As a result, at present JADs compete with

²⁰ The category "other AFH products" encompasses table top products, hanky/facials and kitchen towels used away from home.

traditional hand wiping products in particular with regards to price,²¹ effectiveness, hygiene and environmental standards.

- (34) In order to support the above arguments the Parties provided evidence that a number of their customers have switched from hand wiping tissue to JADs.²² They also put forward that in the United Kingdom JADs have succeeded in gaining 10% of the entire HW market and that further rapid growth of JADs is expected in other Member States.
- (35) The Parties further submit that even if the Commission considers that hand wiping tissue constitutes a separate product market, the competitive constraint from non-tissue hand wiping solutions should be taken into account as part of the competitive assessment as having a strong disciplining effect on tissue pricing.
- (36) The market investigation produced mixed results as to whether JADs form part of the same product market as hand wiping tissue. Whilst the majority of respondents explained that JADs and hand wiping tissue could constitute part of the same product market, mainly because they serve the same use,²³ the majority of respondents in all Member States also expressed the opinion that they did not observe switching from tissue hand wiping into JADs and that they would not switch in case of 5-10% price increase of tissue hand wiping to JADs.
- (37) Respondents often underlined that despite a number of factors which make JADs attractive for end users (such as lower costs of usage and lack of waste paper). There are also certain disadvantages such as high electricity costs and noise associated with the use of JADs. Some respondents also stated that the hygiene benefits of JADs compared to tissue hand wiping are not yet entirely proven. Other respondents also underlined that in some places, such as workshops, garages and patient rooms, tissue hand wiping is more appropriate than JADs.
- (38) The results of the market investigation point to the conclusion that JADs could be seen as part of the same product market as tissue hand wiping or at least as a factor putting competitive pressure over the hand wiping only for certain applications (such as hand drying in bathrooms). However, for purposes of this decision, it is sufficient to analyse the Parties' position on the narrow market for tissue hand wiping, since no competition concerns would arise even under this product market definition.

Branded vs non branded

- (39) The majority of the Parties' AFH sales in the EEA are of branded products. SCA sells its products under the *Tork* brand whereas GPE's brand for AFH is *Lotus Professional*.

²¹ According to the Dyson Airblade brochure the cost of traditional hand wiping dispensed with hand wiping tissue is around GBP 1460 per year whereas the running cost of a Dyson Airblade is around GBP 40 per year.

²² To support this argument the Parties presented a list of major AFH customers which switched from hand wiping tissue products to JADs.

²³ The exact percentage of respondents considering that JADs and tissue hand wiping form part of the same product market varied between Member States. For example in Slovakia only 4 out of 8 respondents were of this opinion whereas in the Baltic States, Denmark, France, Slovenia all respondents considered JADs as part of the same market as tissue hand wiping.

- (40) The Parties agree with the Commission’s precedents that branded and non-branded AFH products are part of the same product market. According to the Parties, brands are of little relevance in the AFH sector. As a result AFH brands are not supported with advertising and promotions. The Parties explained that, with regards to AFH products, branding is not an indicator of product quality and the differentiation within brands themselves (due for example to particular characteristics such as embossing) is of little relevance. In general, according to the Parties, price and not brand, is the main decision driver when it comes to AFH products.
- (41) The market investigation largely confirmed the Parties’ statements as a vast majority of respondents consider branded and non-branded AFH products to constitute one product market. The respondents stated that when purchasing AFH products, “*customers search for quality and function disregarding the brands*”²⁴ and that “*tissue products are usually low involvement goods. When you can convince the customer to the price advantage, and quality is the same, a switch to private label is quite common.*”²⁵
- (42) Therefore, for the purposes of this decision, branded and non-branded AFH products will be considered as part of the same product market.

IV.2.2 Relevant geographic market

- (43) The different markets for AFH products have been typically considered as national in previous Commission decisions²⁶ due to transport cost constraints and customers' national purchasing patterns.
- (44) At the same time, the Commission observed, that certain neighbouring countries, such as Sweden and Norway could be considered as forming a single market or "country cluster". The Commission remarked in *SCA/Metsä Tissue*²⁷ that Nordic countries were characterised by a low level of population density. At the same time, the Nordic countries were seen as being distant from the main continental tissue production clusters. All these factors contributed to an alternative assessment of the Nordic countries as a country cluster though ultimately the geographic market definition was left open.
- (45) In the present case the Parties consider that the market has evolved in a way that there are a number of country clusters for AFH products. These country clusters are in the Parties' view the following: (i) the Baltic States; (ii) Belgium and Luxembourg; (iii) Germany and Austria and (iv) the United Kingdom and Ireland.²⁸ At the Commission's request, the Parties have also provided their market shares on a disaggregated basis (i.e.

²⁴ See reply to question 22.1 of the Commission’s request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers – Sweden (Q. 35) of 15 May 2012.

²⁵ See reply to question 22.1 of the Commission’s request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers – Netherlands (Q. 29) of 15 May 2012.

²⁶ Case COMP/M.2097 *SCA/Metsä Tissue* (para. 73).

²⁷ Case COMP/M.2097 *SCA/Metsä Tissue* (para. 71).

²⁸ It is worth noting that, contrary to Case COMP/M.2097 *SCA/Metsä Tissue* decision, the Parties do not consider Sweden and Norway to constitute a country cluster.

national level) for each of the aforementioned country clusters with the exception of Belgium and Luxembourg.²⁹

- (46) The market investigation confirmed in principle that national product markets are the most relevant for the assessment of the AFH markets since prices and customer preferences (mainly with regards to the product quality) usually vary depending on the Member State in question.³⁰
- (47) The respondents to the Commission' requests for information also underlined that the conditions of competition differ between various Member States since they are influenced by population density, country demographics and economic conditions as well as by the distributor landscape and presence or otherwise of tissue product manufacturers.³¹
- (48) Finally, some respondents also underlined the importance of local sales teams for the different markets.³²
- (49) The market investigation did not produce clear results with regards to the country clusters proposed by the Parties. The respondents within the various country clusters explained that the competition conditions and customer preferences vary within different Member States and not necessarily within the groups of Member States presented as country clusters. While some of these respondents were of the opinion that country clusters would be the most relevant for the assessment of the case, others argued that the markets should be regarded at the national level.
- (50) As a result this transaction shall be assessed at both levels, national and country clusters as proposed by the Parties. In any event the question of the exact geographic market definition can be left open since the transaction does not raise competition concerns irrespective of the geographic market definition.

²⁹ The Parties claimed they were unable to extract separate market shares for Luxembourg.

³⁰ In general the respondents indicated that the prices (and at the same time, the quality requirements) are lower in Eastern Europe than in Western and Middle Europe – See replies to questions 14.1 and 15.1. of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to competitors – Sweden (Q. 44) of 15 May 2012.

³¹ See replies to question 16.1 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to competitors –UK & Ireland (Q. 35) of 15 May 2012.

³² See replies to question 10.1 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers - France (Q. 25) of 15 May 2012.

IV.2.3 Competitive assessment³³

IV.2.3.1 The Baltic States

- (51) Looking at the geographic market based on the country cluster, the Parties' main overlaps occur in object wiping ([60-70]% with [10-20]% increment due to GPE) and hand wiping sector ([40-50]% with [10-20]% increment due to GPE). In these markets Metsä will be the number two competitor post transaction ([10-20]% in object wiping and [30-40]% in hand wiping). The market is characterised by the presence of several suppliers, such as Grigiskes ([0-5]% hand wiping and [10-20]% object wiping) and Kimberly-Clark ([10-20]% hand wiping and [5-10]% object wiping) among the most important ones.
- (52) The Parties overlap, to a more limited extent in toilet paper (combined market share of [20-30]% with [5-10]% increment due to GPE) and napkins (combined market share of [5-10]% with [0-5]% increment due to GPE). In these markets the main competitors are Metsä for toilet paper ([30-40]%) and Grigiskes for napkins ([20-30]%).
- (53) If the transaction were to be analysed on the basis of separate countries, the merged entity would have high market shares in Estonia with major overlaps in hand wiping ([60-70]% with [20-30]% increment due to GPE), object wiping ([40-50]% with [5-10]% increment due to GPE) and toilet paper ([30-40]% with [5-10]% increment due to GPE). However, even under such a scenario, Metsä will remain the second largest supplier with a market share of [20-30]% in hand wiping, [30-40]% in object wiping and [30-40]% in toilet paper, followed by Grigiskes (market shares of [0-5]%, [10-20]% and [10-20]%) and Kimberly-Clark ([5-10]%, [5-10]% and [10-20]%).
- (54) Under a national market definition, the most significant overlaps in Lithuania appear in hand wiping and object wiping markets ([40-50]% and [60-70]%), although the increments from GPE are relatively small ([5-10]% and [5-10]% respectively). The major competitors are Metsä ([30-40]% in hand wiping and [10-20]% in object wiping) and Kimberly-Clark ([10-20]% in hand wiping and [5-10]% in object wiping) and Grigiskes ([0-5]% in hand wiping and [10-20]% in object wiping). There is also a multitude of smaller players on the market such as Wepa, Sofidel and Carma.
- (55) In Latvia the Parties would achieve the highest combined market share in object wiping ([60-70]% with [20-30]% increment due to GPE), hand wiping ([40-50]% with [10-20]% increment due to GPE) and toilet paper ([30-40]% with [5-10]% increment due to GPE). Metsä is the strongest competitor ([10-20]% in object wiping, [40-50]% in hand wiping and [20-30]% in toilet paper), followed by Grigiskes ([10-20]%, [0-5]% and [20-30]%) and Kimberly-Clark ([0-5]%, [5-10]% and [0-5]%). The market in these segments is serviced by other small suppliers such as Wepa, Sofidel and Carma.
- (56) The Parties argue that the proposed concentration will not have a significant impact on competition in the Baltic States since: (i) the market is characterised by a number of

³³ The Parties' market shares in AFH are provided by volume, whereas the market shares for CT are provided by value. This is because, according to the Parties, in the absence of public data on market value of AFH it is difficult to provide meaningful value figures and therefore the volume market shares for AFH are more accurate.

large distributors, such as Inpacs, with strong purchasing power, (ii) the proximity to Germany, Nordic countries and Poland makes it easier for new players to enter the market and (iii) SCA and GPE supply to different distributors with strong buyer power that can easily switch to alternative suppliers in case they no longer wish to buy from the merged entity.

- (57) In the market investigation one customer raised limited concerns regarding a possible increase in price which could stem from a reduction of competition. However, the majority of respondents indicated that competition in the market will not allow any significant price increases and that actually a positive development of prices is expected as competitors will be stimulated to react by bringing benefits to end-customers who will be looking for new alternatives in the AFH market. According to the market investigation market players also expect the Parties to achieve cost efficiencies via a more efficient allocation of production between factories and sharing know-how.
- (58) The market investigation revealed that there are several European wide buyer groups active in the Baltic States, such as Metro Group, Bunzl Europe, Igefa/Inpacs and GVS Germany with strong bargaining power in negotiating contracts for AFH products. In addition, according to the respondents to the market investigation in the Baltics there is still overcapacity in at the EEA level which could be used in the markets in question.³⁴
- (59) As far as entry barriers are concerned, several competitors, such as Wepa, Sofidel, Carma and Celtex, have entered the market in the last five years, although no new entries are expected in the near future due to the large number of existing suppliers already competing in what remain relatively small markets in volume terms.³⁵
- (60) Based on the above arguments it is concluded that the proposed transaction does not raise serious doubts as regards the markets for the supply of AFH products in the Baltic States considered as a whole or individually.

IV.2.3.2 Belgium/Luxembourg

- (61) Following the transaction, the most significant overlaps in the Belgium and Luxembourg cluster³⁶ will occur in hand wiping ([40-50]% with [10-20]% increment due to GPE) and napkins ([30-40]% with [10-20]% increment due to SCA) markets. Kimberly-Clark will remain second player in hand wiping with [30-40]% of the market, followed by Metsä ([5-10]%), Van Houtum ([5-10]%), Ecoline ([0-5]%) and MTS ([0-5]%). In the napkins segment, Duni will continue to be the market leader with a market share of [50-60]%.

³⁴ See replies to question 30.1 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Away from Home Competitors – Baltics (Q. 37), dated 16 May 2012.

³⁵ See replies to questions 47.1, 48.1 and 48.2 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Away from Home Competitors – Baltics (Q. 37), dated 16 May 2012.

³⁶ The Parties were not able to extract separate figures for Belgium and Luxembourg. Therefore the competitive analysis will be carried out for the country cluster.

- (62) The remaining overlaps between the Parties are limited as they would have market shares of [20-30]% in object wiping (with [0-5]% increment due to GPE) and [20-30]% in toilet paper (with [5-10]% increment due to GPE).
- (63) The Parties do not consider that the present transaction will have a negative effect on the market for the following reasons: (i) there are plenty of suppliers in the market with Kimberly-Clark, Van Houtum and Metsä as the major ones, (ii) the proximity to France and Germany means that distributors can switch to different suppliers in case of a price increase.
- (64) The market investigation has validated the Parties' arguments with respect to other competitors active in the market, as the majority of respondents perceive Kimberly-Clark as the closest competitor of SCA, followed by Van Houtum, Sofidel, Metsä and Wepa.
- (65) In case of a price increase, distributors confirm they would be able to switch to different brands or to non-branded products as customers are price sensitive, especially to commodity products such as toilet paper, basic napkins and object wiping. For contracts where prices are negotiated on a yearly basis, distributors will reduce margins for these products before switching to other suppliers as there are, according to the respondents, no costs involved in the switching process.³⁷
- (66) In view of the above and the fact that no competition concerns were raised during the market investigation, the Commission has concluded that the transaction does not raise serious doubts as regards the markets for the supply of AFH products in Belgium and Luxembourg.

IV.2.3.3 Czech Republic

- (67) The merged entity would have a market share of [30-40]% (with [0-5]% increment due to GPE) in hand wiping and [30-40]% (with [5-10]% increment due to GPE) in object wiping. The main competitors of the Parties in these markets are Metsä ([10-20]% in hand wiping and [10-20]% in object wiping) and Sofidel ([10-20]% in hand wiping and [5-10]% in object wiping).
- (68) In napkins, the Parties will obtain [20-30]% market share (with [5-10]% increment due to SCA), but they will face significant constraints from competitors such as Duni ([20-30]%), Wimex ([10-20]%), Sofidel ([10-20]%) or Moracell ([5-10]%) The market is characterised by a diversity of suppliers, with Metsä, Sofidel and Kimberly-Clark among the strongest ones.
- (69) Based on the above, the only significant overlap of the Parties would occur is in object wiping. However, no competition concerns were raised during the market investigation with respect to any market in the Czech Republic. As a result it is concluded that the transaction does not raise serious doubts as regards the markets for the supply of AFH products in the Czech Republic.

³⁷ See non-confidential minutes of conference call with Lyreco, 8 June 2012.

IV.2.3.4 Denmark

- (70) The most significant overlaps between the Parties' activities arise in hand wiping ([40-50]% with [10-20]% increment due to GPE), object wiping ([20-30]% with [5-10]% increment due to GPE) and toilet paper ([20-30]% with [10-20]% increment due to GPE). The Parties do not consider that the transaction will have a significant impact on these markets since Metsä will remain a significant supplier of hand wiping ([30-40]%), object wiping ([40-50]%) and toilet paper ([40-50]%), followed by other strong competitors such as Abena ([10-20]% hand wiping; [10-20]% object wiping and [10-20]% toilet paper) and Kimberly-Clark. In addition, the Parties submit that strong distributors such as Bunzl and Lyreco, which are currently sourcing from a number of AFH suppliers, could easily switch to alternative suppliers and therefore lessen their dependency on the merged entity if it were to increase prices.
- (71) The Parties also overlap, but to a more limited extent, in other AFH products where the merged entity would obtain market shares of [20-30]% ([5-10]% increment due to GPE) and [10-20]% in napkins ([5-10]% increment due to SCA).
- (72) The market investigation revealed that post-transaction there will be sufficient suppliers on the market that can offer a whole range of products and that in fact, prices might decrease due to economies of scale.³⁸ Indeed, important distributors such as Bunzl have negotiating power and any price increase must be transparent and based on verifiable criteria such as energy costs.³⁹ Therefore it is concluded that the transaction does not raise serious doubts as regards the markets for the supply of AFH products in Denmark.

IV.2.3.5 Finland

- (73) In Finland the Parties overlap in a number of AFH categories with the highest market share being in hand wiping ([30-40]% with [5-10]% increment due to SCA). The competitors of the Parties on this market are Metsä ([60-70]%) and a number of small players such as Wepa ([0-5]%), Ranikon ([0-5]%) and others. The Parties also overlap in the napkins segment ([20-30]%) though the increment from SCA is limited at [0-5]%. However, Duni ([30-40]%), Fiblon ([20-30]%) and Metsä ([5-10]%) represent a significant competitive constraint on the merged entity. In addition the Parties overlap, but to a more limited extent, in toilet paper, where the merged entity would obtain market shares of [10-20]% ([5-10]% increment due to SCA) with main competitor Metsä ([70-80]%) and Wepa ([0-5]%).
- (74) The Parties argue that the transaction will not significantly impede competition as the market shares are moderate and the market exhibits some unique features within the EEA with end customers buying tissue products from local suppliers for a variety of historical and geographical reasons. Metsä is a local Finnish based supplier and by far the largest supplier on the market with shares of [70-80]% and [60-70]% in toilet paper

³⁸ See replies to questions 32 and 50 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Away from Home Customers – Denmark (Q. 23), dated 16 May 2012.

³⁹ Non-confidential minutes of conference call with Bunzl, 6 June 2012.

and hand wiping respectively. It will continue to be the market leader in Finland following SCA's proposed acquisition of GPE.

- (75) During the market investigation, one customer expressed concerns that the proposed acquisition might lead to fewer alternatives and less competition which might translate into higher prices. In contrast, the majority of respondents believe that SCA will actively challenge and compete with Metsä in such a way that prices will decrease.⁴⁰ In addition, distributors perceive Metsä as a strong competitor since it is a Finnish company with good knowledge of the local market which is offering a whole range of products of quality comparable to the one of SCA.⁴¹
- (76) Based on the above arguments it is concluded that the proposed transaction will not raise serious doubts as regards the markets for the supply of AFH products in Finland.

IV.2.3.6 France

- (77) In France the Parties overlap in toilet paper, hand wiping, object wiping and napkins. Post transaction the merged entity would obtain the most significant market shares in object wiping [40-50]% ([10-20]% increment due to SCA) and hand wiping [40-50]% ([10-20]% increment due to SCA). It will however continue to face a number of competitors such as Panadayle ([10-20]% in object wiping and [20-30]% in hand wiping), Kimberly-Clark ([5-10]% in object wiping, [5-10]% in hand wiping) as well as MP Hygiene ([5-10]% in object wiping, [5-10]% in hand wiping).⁴² The merged entity's position in toilet paper and napkins would be more moderate, with the combined market shares of [30-40]% (increment of SCA [5-10]%) and [20-30]% (increment of SCA [0-5]%) respectively.
- (78) The vast majority of respondents did not raise concerns with regards to the French market. However a limited number of customers expressed the view that as the transaction is a merger of two of the largest players on the French AFH market, it might lead to a reduction of competition and price increases in the mid-term.
- (79) Upon further investigation, however, these respondents admitted that in case the Parties were to decrease the availability of products at satisfactory prices, they could still switch to other competitors active in France and in other Member States, including Kimberly-Clark and Sofidel. In addition, some competitors expressed the opinion that the transaction would provide them with new opportunities since customers will search for new alternatives in the AFH market.⁴³

⁴⁰ See replies to question 50 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Away from Home Customers – Finland (Q. 24), dated 16 May 2012.

⁴¹ See replies to question 50 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Away from Home Customers – Finland (Q. 24), dated 16 May 2012.

⁴² The Parties do not overlap in health care and other AFH.

⁴³ See replies to question 50 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Away from Home Customers – France (Q. 42), dated 15 May 2012.

- (80) Based on the above arguments it is concluded that the proposed transaction does not raise serious doubts as regards the supply of AFH products in France.

IV.2.3.7 Germany and Austria

- (81) In Germany and Austria the Parties overlap in toilet paper, hand wiping, object wiping and napkins. The Parties would have a combined market share of [30-40]% in napkins ([10-20]% increment due to GPE) and [30-40]% in hand wiping ([0-5]% increment due to GPE). The merged entity would face Duni as the main competitor for napkins ([30-40]%). The main competitors of the merged entity for hand wiping would be Wepa ([10-20]%), Kimberly-Clark ([10-20]%), and Sofidel ([10-20]%).
- (82) The Parties position in the remaining AFH segments would be moderate. More particularly they would have a [20-30]% combined market share in toilet paper (with [0-5]% increment due to GPE) and [10-20]% in object wiping (with [0-5]% increment due to GPE).⁴⁴
- (83) Similar market shares would be obtained if Germany were to be considered as a separate geographic market. Under this scenario, the Parties would obtain market shares of [30-40]% in napkins (increment [10-20]% due to GPE) and [30-40]% in hand wiping (increment [0-5]% due to GPE). The Parties would also overlap in toilet paper ([10-20]%) and object wiping ([10-20]%).
- (84) The Parties' main competitors in Germany are Kimberly-Clark with market shares of [20-30]% in toilet paper, [10-20]% in hand wiping and [30-40]% in object wiping as well as Metsä with market shares of [5-10]% in toilet paper, [5-10]% in hand wiping and [30-40]% in object wiping. As regards the napkins market, the Parties would compete with Duni ([30-40]%) and Metsä ([10-20]%).
- (85) More significant market shares would be obtained by the merged entity in Austria where the Parties would have a combined market share of [50-60]% in hand wiping ([0-5]% increment due to GPE) and [40-50]% in napkins ([10-20]% increment due to GPE). The Parties would also have a relatively high market share of [40-50]% in object wiping ([0-5]% increment due to GPE).
- (86) The Parties' main competitors in Austria are Kimberly-Clark with market shares of [0-5]% in toilet paper, [5-10]% in hand wiping and [10-20]% in object wiping as well as Sofidel with market shares of [0-5]% in toilet paper, [5-10]% in hand wiping. As regards the napkins market, the Parties would continue to face competition from other suppliers including Duni ([20-30]%) and Paloma ([5-10]%).
- (87) During the market investigations a number of concerns were raised by customers with respect to the German market.⁴⁵ These concerns related mainly to lack of remaining competitors' capacity to increase their production in case the merged entity were to limit its supply to the German market.

⁴⁴ The Parties do not overlap in health care and other AFH.

⁴⁵ No concerns have been raised with regards to the Austrian market.

- (88) In response to these concerns, the Parties provided evidence⁴⁶ of spare capacity on the German market. They provided information with regards to 120 mills having spare capacity and operated by 70 potential competing suppliers, all of which are within viable delivery distance to supply Germany.
- (89) In addition the Parties underlined that GPE is a minor AFH products supplier on the German market. They also name a number of credible suppliers which post-merger could effectively compete with the Parties, such as Kimberly-Clark, Wepa, Metsä, Sofidel or Duni.
- (90) Indeed, further market investigation revealed that some of the Parties' competitors have spare capacity in their plants located in Germany as well as near the German border. What is more, the vast majority of the respondents did not raise concerns with regards the German market.
- (91) Based on the above arguments it is concluded that the proposed transaction does not raise serious doubts as regards the markets for the supply of AFH products in Germany and/or Austria.

IV.2.3.8 Hungary

- (92) The increment arising from the concentration is low or *de minimis* in most segments, with the most significant overlaps in hand wiping and object wiping where the combined market shares are [40-50]% ([0-5]% due to GPE) and [40-50]% ([0-5]% due to GPE) respectively. The Parties' main competitors are Merida ([10-20]% and [5-10]% in hand and object wiping respectively) and Forrest ([10-20]% in each of hand and object wiping).
- (93) The toilet paper segment will witness only a small increment of [0-5]% in market share due to GPE, leading to a market share of [20-30]%, while the napkins segment will be subject to [5-10]% increment resulting in a combined market share of only [10-20]%.
- (94) Given the variety of suppliers present in the market, such as Forrest, Merrida, Kimberly-Clark and Bokk Net that are able to provide a whole range of products and the fact that no concerns were raised during the market investigation, it is concluded that the transaction does not raise serious doubts as regards the markets for the supply of AFH products in Hungary.

IV.2.3.9 The Netherlands

- (95) Post transaction the merged entity will have relatively high market shares in napkins (combined [40-50]% with [5-10]% increment due to SCA), object wiping (combined [30-40]% with [5-10]% increment due to GPE) and hand wiping ([30-40]% with [5-10]% increment due to GPE). The main competitors of the merged entity will be Duni in the napkins market ([40-50]%) and Kimberly-Clark in object wiping ([20-30]%) and hand wiping ([30-40]%). Other AFH players on the Dutch market are MTS ([0-5] % in napkins, [10-20]% in object wiping and [10-20]% in hand wiping) and Van Houtum

⁴⁶ See Morrison & Foerster paper "The impact of the Transaction on the supply of AFH tissue products in Germany", 13 June 2012.

([5-10]% in object wiping and [10-20]% in hand wiping).⁴⁷ The Parties will also overlap in toilet paper but with more limited market shares (combined [20-30]% with [5-10]% increment due to GPE).

- (96) The market investigation revealed some concerns in particular with regards to the fact that the transaction would reduce competition in the so-called "high end" or "branded" part of the market where only three players (SCA, GPE and Kimberly-Clark) were said to be present.⁴⁸ Some concerns were also raised with regards to the Parties' (hand wiping) locked – in dispenser systems where the Parties seem to closely compete.⁴⁹
- (97) The Parties responded to the above concerns by submitting a paper⁵⁰ in which they argued that there would remain other credible AFH suppliers competing on the Dutch market post transaction and that all of them provide a wide range of tissue products in order to satisfy different customer specifications and needs. In addition, the Parties argued that based on the bidding data SCA and GPE rarely won contracts against each other.
- (98) The Parties also put forward that in practice suppliers are not able to avoid that competitors' AFH tissue products are used in their dispensers. In order to support this argument they provided a copy of one of their Dutch competitors' catalogues⁵¹ in which this competitor demonstrates that its products fit into SCA, Metsä and GPE dispensers.
- (99) What is more, the Parties state that even if they had the possibility to lock in their input into the dispensers, this possibility would not be changed by the transaction. This is because GPE's products do not suit SCA's dispensers and vice – versa. In addition, the Parties explain that were they able to lock in some of their customers by means of the dispensers, they would already be extracting maximum payment thereof. Therefore the transaction would not change anything in this respect.
- (100) The market investigation to a large extent confirms the above argumentation. Indeed the majority of respondents in the Netherlands did not raise competition concerns with

⁴⁷ The Parties do not overlap in the health care market.

⁴⁸ Some respondents to market investigation perceived the products offered by other AFH players, in particular MTS and Van Houtum, as lower quality and therefore not constituting a viable alternative for 'high end' customers.

⁴⁹ The AFH products, which the Parties use, are often served by means of dispensers. The Parties submit that manufacturers often supply AFH products together with dispensers in which the products are placed. Dispensers are put in place not only as a means of delivering the product but also as a means for regulating use. For this reason, end customers usually purchase dispensers or obtain them free-on-loan. The SCA contracts specify for instance that the dispensers remain the property of SCA and require the end customer only to use *Tork* for subsequent refills. Although in practice also competitors' products could be used within these dispensers, the market investigation revealed that in certain, more sophisticated dispensers (mainly for hand wiping) which the Parties' offer, only the Parties' products could be used in their respective dispensers.

⁵⁰ See Morrison & Foerster paper "The impact of the Transaction on the supply of AFH tissue products in the Netherlands", 13 June 2012.

⁵¹ Catalogue of MTS.

regards to the transaction. Some of the respondents even expect prices to decrease and better product availability due to synergies resulting from the operation.

- (101) Moreover the market investigation confirmed that a large number of third parties' AFH products (branded and non-branded) could be used with the Parties' dispensers. Also, the majority of the market respondents were of the opinion that in case of a price increase of high-end/branded products, ultimate customers would switch to "non-branded" AFH products and hence the "low-end" part of the market would put competitive constraint on the "high – end."⁵²
- (102) Based on the above arguments it is concluded that the transaction does not raise serious doubts as regards the markets for the supply of AFH products in the Netherlands.

IV.2.3.10 Norway

- (103) The most significant overlaps are in the object wiping sector ([40-50]%), hand wiping ([40-50]%) and toilet paper ([30-40]%), although the increments are relatively modest ([0-5]% in object wiping, [5-10]% in hand wiping and [5-10]% in toilet paper due to GPE). The Parties submit that Metsä will continue to have by far the largest share on the market. In addition, one of the largest distributors confirmed that it could easily switch suppliers in case of a price increase.⁵³
- (104) According to Norgesgruppen, one of [...] major distributors, any price increase is strongly negotiated with the supplier and it is allowed [...] if it is firmly justified. Other respondents indicated that the proposed acquisition could have positive effects with a larger range of products being offered at competitive prices.⁵⁴
- (105) Based on the above it is concluded that the transaction does not raise serious doubts as regards the markets for the supply of AFH products in Norway.

IV.2.3.11 Slovakia

- (106) The Parties' main overlap is in object wiping with a combined market share of [30-40]% (increment of [5-10]% due to GPE). The Parties argue that Metsä will remain the largest supplier of object wiping products ([30-40]%), followed by other active suppliers such as Kimberly-Clark ([5-10]%) and Sofidel ([5-10]%).
- (107) In addition, the merged entity will benefit from a [0-5]% increment from SCA in the napkins sector leading to a combined market share of [20-30]%, but this will be counter-balanced by other competitors such as Duni ([20-30]%), Wilmex ([10-20]%) or

⁵² In addition the market investigation confirmed that branded and non-branded AFH products belong to one market. This statement goes against the perception of some customers which would distinguish between 'high end' and 'low-end' of the market.

⁵³ See replies to question 30 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Away from Home Customers – Norway (Q. 30), dated 16 May 2012.

⁵⁴ See replies to question 50 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Away from Home Customers-Norway (Q. 30), dated 16 May 2012.

Sofidel ([10-20]%). The increments in toilet paper and hand wiping are *de minimis* ([0-5]% and [0-5]% respectively) and therefore do not lead to substantially increased market shares in these segments.

- (108) The market investigation did not raise any competition concerns. Given the low market shares and lack of concerns from the market players it is concluded that the transaction does not raise serious doubts as regards the markets for the supply of AFH products in Slovakia.

IV.2.3.12 Slovenia

- (109) The merged entity will have a [30-40]% market share in hand wiping with a small increment of [0-5]% due to GPE. In all other AFH segments, the merged entity's market shares will be lower: [10-20]% in object wiping ([5-10]% increment due to GPE), [10-20] % in toilet paper and [5-10]% in napkins ([0-5]% increments due to GPE for both segments). The Parties submit that the overlap in hand wiping should not raise competition concerns as GPE's sales are not significant and the market is very competitive with Celtex ([10-20]%), Paloma ([10-20]%), Lucart ([10-20]%), Kimberly-Clark ([5-10]%) and Metsä ([5-10]%) as the alternative major suppliers.
- (110) The Commission's investigation showed that the market for AFH products in Slovenia is characterised by a diverse and large number of suppliers and that the proposed transaction will not affect product availability.⁵⁵ Given the lack of concerns in the market investigation, it is concluded that the proposed transaction does not raise serious doubts as regards the markets for the supply of AFH products in Slovenia.

IV.2.3.13 Sweden

- (111) In Sweden, the transaction will lead to the merged entity having relatively high market shares in all AFH categories though the increment in most instances is limited. The merged entity would obtain the most significant market shares in object wiping ([50-60]% with [0-5]% increment by GPE) and hand wiping ([50-60] % with [5-10]% increment due to GPE) leaving Metsä as the only competitor of comparable size ([30-40]% in object wiping and [40-50]% in hand wiping). The other competitors in Sweden are Papper & Plast ([0-5]% and [0-5]% in object and hand wiping respectively), Abena ([0-5]% and [0-5]% in object and hand wiping respectively), Kimberly-Clark ([0-5]% and [0-5]% in object and hand wiping respectively).⁵⁶
- (112) The Parties would also obtain significant market shares in toilet paper ([40-50]% combined with [0-5]% increment due to GPE) and napkins ([40-50]% combined with [10-20]% increment due to SCA). Their main competitors for these markets would be Metsä ([50-60]% in toilet paper and [0-5]% in napkins), Abena ([5-10]% in toilet paper), Duni ([40-50]% in napkins) and Celeste ([10-20]% in napkins).

⁵⁵ See replies to question 50 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Away from Home Customers-Slovenia (Q. 33), dated 16 May 2012.

⁵⁶ The Parties do not overlap in health care.

- (113) The Parties submitted that the transaction would not raise competition concerns on the Swedish market since the increment is low for all the markets concerned with the exception of napkins⁵⁷. The latter, however, are transported over significant distances and therefore they could be imported from neighbouring Member States.
- (114) In addition the Parties submit that there are a number of competitors for each type of AFH product, which would exercise competitive constraint on the merged entity.
- (115) During the course of the market investigation a limited number of customers raised concerns linked to the fact that the merger in their view would eliminate a cost effective competitor in Sweden in the form of GPE. In particular, one large AFH distributor explained that GPE had a disciplinary role on the two main AFH suppliers in Sweden, namely SCA and Metsä. This customer also stressed that barriers to entry to the Swedish AFH market are particularly high because of the strong position of SCA, Metsä and GPE.⁵⁸
- (116) A number of other AFH distributors pointed to the possibility that the transaction could lead to higher prices. These distributors however considered that any eventual price increases would depend on the strategy of the merged entity since at the same time the merged entity could benefit from efficiencies and as a result, the prices of AFH products could decrease.⁵⁹
- (117) The Parties responded to the above arguments in a paper submitted to the Commission.⁶⁰ They claimed that post-merger the competitive dynamic would not be altered significantly as GPE's share of AFH supply in Sweden is small and dependent on small value contracts with large distributors and that the merged entity will still face credible competitors.
- (118) Moreover, the Parties demonstrated, based on the limited bidding data available,⁶¹ that they were not particularly close competitors in Sweden since the tenders lost by SCA and GPE were primarily won by Metsä. In addition the Parties are of the opinion that GPE is not a maverick on the Swedish market.
- (119) The argumentation of the Parties has been confirmed by the majority of respondents to the market investigation in Sweden (competitors and customers, including the largest AFH distributors⁶²). These respondents acknowledged that the increment due to

⁵⁷ The Parties submit in this respect that GPE's napkins sales partly reflect a large contract with [...].

⁵⁸ See non-confidential minutes of call with Tingstadt, 4 June 2012.

⁵⁹ See non-confidential minutes of call with Papyrus, 7 June 2012 and non-confidential minutes of call with City Paper, 7 June 2012.

⁶⁰ See Morrison & Foerster paper "The impact of the Transaction on the supply of AFH tissue products in the Sweden", 13 June 2012.

⁶¹ SCA puts forward that the contracts won through tenders cover around [5-10]-[10-20]% of all AFH sales, whereas GPE's volumes associated with tender participation account for [30-40]% of all AFH volumes.

⁶² AFH distributors are mainly facility services companies and washroom service companies which specialize in selling the whole range of AFH products to, inter alia, businesses and public authorities.

transaction is low and they see Metsä and (to a more limited extent) Kimberly-Clark as possible suppliers to the Swedish AFH market.

- (120) In addition, some respondents explained that the merger could lead to more efficient logistic chains and that overall they would expect to benefit from these efficiencies in the form of lower prices post transaction.
- (121) Taking the above into account it is concluded that the transaction does not raise serious doubts as regards the markets for the supply of AFH products in Sweden.

IV.2.3.14 The United Kingdom/Ireland

- (122) As a result of the transaction the Parties will gain relatively high market shares in the United Kingdom/Ireland cluster with regards to hand wiping ([30-40]% with [10-20]% increment due to GPE) and napkins ([20-30]% with [0-5]% increment due to SCA). However in each of these segments the merged entity would continue to face important competitors such as Kimberly-Clark ([20-30]%) and Sofidel ([5-10]%) for hand wiping and Swan Mill ([60-70]%) and Duni ([5-10]%) for napkins.
- (123) The transaction will also give rise to overlaps in toilet paper (combined [20-30]% with [10-20]% increment due to SCA), object wiping (combined [20-30]% with [10-20]% increment), health care (combined [20-30]% with [5-10]% increment due to SCA) and other AFH (combined [10-20]% with [0-5]% increment due to SCA).
- (124) If national market shares were to be taken into account, the transaction would give rise to relatively high market shares in hand wiping and object wiping in Ireland where the merged entity would be the market leader with market shares of [50-60]% in object wiping ([10-20]% increment due to SCA) and [50-60]% in hand wiping ([10-20]% increment due to SCA).
- (125) The main competitors of the merged entity in Ireland would be Kimberly-Clark ([10-20]% and [20-30]% in object and hand wiping respectively) and Accrol ([0-5]% and [0-5]% respectively).
- (126) Notwithstanding these market shares, the market investigation did not raise major concerns with regards to any of the AFH markets within the United Kingdom and/or Ireland. The respondents to the Commission's requests for information underlined that the transaction will give rise to efficiencies and there are a number of remaining competitors on the market.⁶³
- (127) Limited concerns have been raised by one of the Parties' customers in napkins active in UK/Ireland. This customer is of the opinion that post acquisition there could be restriction on napkin competition not only within UK/Ireland but in the whole EEA

⁶³ See replies to question 50 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Away from Home Customers – UK/Ireland (Q. 27), dated 16 May 2012.

However, at the same time this customer does not expect significant price changes post transaction in the EEA.⁶⁴

- (128) In addition, the market investigation confirmed that napkins (as folded rather than rolled products) travel longer distances than other AFH products and therefore, they could be supplied from a number of locations across different Member States.
- (129) Based on the above arguments it is concluded that the proposed transaction does not raise serious doubts as regards the markets for the supply of AFH products in the United Kingdom and/or Ireland.

IV.3. CONSUMER TISSUE ("CT")

IV.3.1 Relevant product market

- (130) The Commission has previously defined separate products markets within the consumer tissue sector for toilet paper ("TP"), household towels ("HHT"), handkerchief/facials ("Ha/Fa") and napkins.⁶⁵
- (131) For all tissue products, paper producers sell consumer tissue products to retailers which, in turn, sell these products to consumers. Therefore, there are two stages in the supply chain: the upstream procurement level (production and supply of tissue products to retailers) and the downstream retail level (sale of products to consumers). Within the CT category, the Parties are only active at the upstream production and supply level.
- (132) There are two "categories" of consumer tissue products: "branded CT products" (also referred to as "manufacturer brands") and "private labels" (also called "retailer brands"). The two categories of products are sourced by retailers via different procurement procedures, though they are displayed next to each other on the shelves at the retail level.⁶⁶ The Parties produce both branded CT products and private labels.
- (133) The market investigation broadly confirmed that at the retail level, branded CT products and private labels compete on the shelves and are part of one single market. However, for the purposes of this case it is not necessary to define this market as the Parties are not active at the retail level. Nevertheless, as explained further below in this decision, the competitive interaction between branded CT products and private labels at the retail level (on retailers' shelves) is crucial for the competitive assessment of the notified transaction.

⁶⁴ See reply to question 50 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Away from Home Customers – UK/Ireland (Q. 27), dated 16 May 2012.

⁶⁵ Case IV/M.623 *Kimberly-Clark/Scott*, Case COMP/M.2097 *SCA/Metsä Tissue*, Case COMP/M.2522 *SCA/CarthoInvest*, Case COMP/M4054 *Koch Industries/Georgia-Pacific* and Case COMP/M.4533 *SCA/P&G*.

⁶⁶ See replies to question 63 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Consumer Tissue Customers, dated 16 May 2012.

- (134) The market investigation carried out by the Commission, has broadly confirmed that at the upstream production and supply level branded products and private labels belong to separate markets.
- (135) Although there is high supply-side substitutability between the production of branded products and private labels, the market investigation confirmed that only some consumer tissue producers supply both private labels and branded products, in particular, private label producers do not always supply branded products.⁶⁷ In *SCA/P&G* the Commission found that the reason for this is that there is a relatively high entry cost into the branded segment of the market, with considerable investment and time needed to build a brand and raise consumers' awareness thereof.⁶⁸ The outcome of the market investigation in the present case does not contradict the Commission's earlier findings in the *SCA/P&G* decision.
- (136) As a result, the competitive interaction at the procurement level between producers of branded products and producers of private labels is asymmetric and very partial: the former can exert competitive pressure on the latter, but not vice-versa. Moreover, if one also considers that producers' margins are typically higher for branded CT products than for private label products, it appears that manufacturers producing both branded and private labels would therefore normally prefer to use their capacity for production of branded products. As a result, the owners of strongly positioned tissue brands have a clear focus on branded CT production and mostly produce private labels to the extent necessary to utilise spare production capacity and gain economies of scale.⁶⁹
- (137) Finally, the market investigation has also confirmed the findings in *SCA/P&G* as regards the different procurement processes for branded tissue and private labels.⁷⁰
- (138) Accordingly, for the purpose of this decision, the markets for the supply of consumer tissue products should be divided into (i) the production and supply of manufacturer brands/CT branded products and (ii) the production and supply of private labels/retailer brands. All of the above is applicable separately to the four categories of tissue products (TP, HHT, Ha/Fa and napkins).
- (139) However, it must be reiterated and highlighted that, although the focus of the competitive assessment is on the upstream separate markets as defined above and in which the Parties are directly active, the competitive interaction at the downstream retail level (i.e. on supermarkets' shelves) between manufacturer/branded products and retailer/private labels is crucial for the assessment of the case.⁷¹

⁶⁷ See replies to question 65 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Consumer Tissue Customers, dated 16 May 2012.

⁶⁸ Case COMP/M.4533 *SCA/P&G* (para. 24).

⁶⁹ For instance Kimberly-Clark is focused on the branded segment.

⁷⁰ Case COMP/M.4533 *SCA/P&G* (para. 27).

⁷¹ Case COMP/M.4533 *SCA/P&G* (para. 29).

IV.3.2 Relevant geographic market

- (140) As regards the geographic scope of these markets, the Commission has typically found the relevant CT markets for the production and supply of branded products to be national in scope or to encompass several countries or "country clusters" which present similar features (language, retail chains, consumer preferences, brands, etc.).⁷² As regards the production and supply of retailer brands, the Commission has considered it as being broader than national but narrower than the EEA.⁷³
- (141) The Parties endorse this approach and argue that the Baltic States, Belgium/Luxembourg, Greece/Cyprus and the UK/Ireland should be considered as country clusters.⁷⁴
- (142) The Commission has therefore assessed the present case on the basis of the market definition proposed by the Parties i.e. national or based on a number of "country clusters". The market investigation has not contradicted the Parties' proposals except for the Baltic States. As regards the Baltic States the market investigation has pointed to some elements that could indicate a separate assessment based on national markets, such as the fact that the leading retailers are partly different and the language is not the same for the countries.⁷⁵
- (143) However, the precise scope of the geographic market for the Baltic States can be left open since it will not change the outcome of the competitive assessment of the proposed concentration.

IV.3.3 Competitive assessment

Markets without serious doubts

IV.3.3.1 The Baltic States

IV.3.3.1.1 Production and supply of branded CT products

- (144) In the Baltic States the Parties overlap in branded TP, HHT and Ha/Fa.
- (145) In both TP and HHT, the Parties have combined market shares of [20-30]%. In addition, Grigiskes in TP and Metsä in HHT will remain strong suppliers with a share of [20-30]% and [20-30]%.
- (146) Post transaction the Parties would have relatively high combined market share of [50-60]% in Ha/Fa in the Baltic States. However, the overlap due to GPE is limited at [0-

⁷² Case COMP.M2522 *SCA/CaroInvest*, Case COMP/M. 2097 *SCA/ Metsä Tissue*, Case COMP/M.623 *Kimberly-Clark/Scott* and Case COMP/M.4533 *SCA/P&G*.

⁷³ Case COMP/M.4533 *SCA/P&G* (para. 39).

⁷⁴ Form CO, page 228.

⁷⁵ See replies to question 57 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Consumer Tissue Competitors, dated 16 May 2012.

5]%. The Parties' main competitors on this market would be Kimberly-Clark ([20-30]%) and Metsä ([5-10]%).

- (147) Should separate countries constituting the Baltic States be considered, the transaction gives rise to more significant market shares in Estonia in Ha/Fa of [70-80]% with an [5-10]% increment due to GPE and [40-50]% in HHT with an [10-20]% increment due to SCA.
- (148) The Parties submit that no competition concerns will arise in the Baltic States for the following reasons: (i) a number of strong alternative consumer tissue manufacturers currently and will continue to supply products to retailers; (ii) the existing overcapacity in Europe means that there is no shortage of suppliers able to supply retailers with sufficient quantities of product and (iii) Kimberly-Clark and others will remain as strong branded CT products suppliers, including Metsä, ES Horizon and Sofidel.
- (149) The market investigation has confirmed that the supply of branded CT products is and will remain competitive in the Baltics States since there are many alternative suppliers⁷⁶ even for Ha/Fa.⁷⁷
- (150) On the basis of the foregoing and given that the market investigation has not raised concerns, the Commission has concluded that the transaction does not raise serious doubts as regards the markets for the supply of branded CT products in the Baltic States considered as a whole or individually.

IV.3.3.2 Belgium/Luxembourg

IV.3.3.2.1 Production and supply of branded and private label CT products

- (151) In Belgium/Luxembourg, the Parties overlap in the supply of branded TP, HHT and Ha/Fa. They also overlap in the supply of private label TP and HHT.
- (152) In the supply of branded TP, the market investigation has not raised any concerns. Even if the merged entity would have a market share of [60-70]% (SCA: [5-10]%, GPE: [50-60]%), the increment from the merger is relatively small and it seems that the market will remain competitive with sufficient constraint from the brands of Kimberly-Clark ([30-40]%) and other small competitors (Renova: [0-5]%, Sofidel: [0-5]%, Wepa: [0-5]%). As regards branded HHT, the same conclusion applies: the high combined market share of the Parties ([70-80]%) is counterbalanced by a marginal market share increment ([0-5]% by SCA) and the presence of Kimberly-Clark ([10-20]%), Renova ([0-5]%) and Sofidel ([0-5]%). Moreover, respondents to the market investigation have not raised any issues in this regard. Finally, the combination of the Parties in the supply of branded Ha/Fa did not raise any concerns mainly due to the low combined market

⁷⁶ See replies to question 52 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) 139/2004 addressed to Consumer Tissue Customers – Baltics (Q. 1), dated 16 May 2012.

⁷⁷ See replies to question 52.3 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) 139/2004 addressed to Consumer Tissue Customers – Baltics (Q. 1), dated 16 May 2012.

share of [20-30]% (SCA: [10-20]% and GPE: [10-20]%), far behind Kimberly-Clark, the market leader ([70-80]%).

- (153) As regard the supply of private label TP, the Parties would hold [50-60]%. However, the increment in market share is marginal ([0-5]% by GPE), and a significant number of other players continue to be present in the market, namely Metsä ([10-20]%), Sofidel ([5-10]%), Wepa ([0-5]%), Kimberly-Clark ([0-5]%) along with other small suppliers representing [10-20]% of the market. Also in this regard, the market investigation has confirmed the absence of concerns.
- (154) Finally, the same conclusion would apply to the supply of private labels HHT where the merged entity would have a market share of [30-40]%. The market share increment is marginal ([0-5]% by GPE) and the market will remain sufficiently fragmented with the market leader, Metsä ([40-50]%) as well as Sofidel ([10-20]%) and "others" ([5-10]%).

Table 1: Market shares in CT branded products (Belgium/Luxembourg)

| BELGIUM/LUXEMBOURG 2010 VALUE | SUPPLIER | SUPPLY OF BRANDED CT PRODUCTS (%) |
|--|-----------------|--|
| TP | SCA | [5-10] |
| | GPE | [50-60] |
| | Combined | [60-70] |
| | Kimberly-Clark | [30-40] |
| | Renova | [0-5] |
| | Sofidel | [0-5] |
| | Wepa | [0-5] |
| HHT | SCA | [0-5] |
| | GPE | [70-80] |
| | Combined | [70-80] |
| | Kimberly-Clark | [10-20] |
| | Renova | [0-5] |
| | Sofidel | [0-5] |

Source: Form CO

Table 2: Market shares in private label CT products (Belgium/Luxembourg)

| BELGIUM/LUXEMBOURG 2010 VALUE | SUPPLIER | SUPPLY OF PRIVATE LABELS (%) |
|--|-----------------|---|
| TP | SCA | [50-60] |
| | GPE | [0-5] |
| | Combined | [50-60] |
| | Others | [10-20] |
| | Metsä | [10-20] |
| | Sofidel | [5-10] |
| | Wepa | [0-5] |
| | Kimberly-Clark | [0-5] |
| HHT | SCA | [30-40] |
| | GPE | [0-5] |
| | Combined | [30-40] |
| | Metsä | [40-50] |
| | Sofidel | [10-20] |
| | Others | [5-10] |

Source: Form CO

Concerns with regards to possible portfolio effects

- (155) During the course of the market investigation, however, some concerns were raised as regards possible portfolio effects covering TP and HHT.⁷⁸
- (156) One of Belgium's major retailers expressed concerns stemming from the combination of SCA's strong position in the supply of TP and HHT private labels and GPE's strong position in the supply branded TP and HHT (with its *Lotus* brand). According to this retailer the high share of GPE brand ([70-80]% in HHT and [50-60]% in TP) in Belgium might give the merged entity incentives to raise its prices. This is because such price increase could (at least in part) be passed on by the retailers to consumers. Consequently, these consumers would partly switch their purchases to CT private labels. As a result, the merged entity would gain from the additional volumes sold, since SCA has high share of CT private labels in Belgium ([50-60]% in TP and [30-40]% in HHT). In other words, incentives might change post-merger, as SCA could "recapture" some sales of private labels to customers that pre-merger would have been lost for GPE.
- (157) The Parties provided additional evidence⁷⁹ to dismiss the possibility of the transaction raising such portfolio effects.
- (158) First, the large majority of SCA's private label sales in Belgium are to retailers (hard discounters) that do not sell manufacturers' brands, namely [...] and [...], which account for at least [...]% of SCA's HHT sales and at least [...]% of SCA's TP sales.⁸⁰ It would therefore be inappropriate to view SCA's share of private labels TP and HHT as indicative of the ability to recapture diverted TP and HHT volumes.
- (159) Second, even where the in-store increment is large (i.e. high purchases of private labels from SCA in addition to high purchases of a branded product from GPE), this does not mean that a retailer would allow a higher manufacturer brand price post-merger, as it could simply switch (or credibly threaten to switch) private label procurement to a supplier other than SCA, thereby impeding the merged entity from recouping losses through this channel. This is possible because the private label sector in Belgium is very competitive.⁸¹ There are a number of private label manufacturers that supply, or could

⁷⁸ See replies to the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Consumer Tissue Customers – Belgium/Luxembourg (Q. 2), dated 16 May 2012.

⁷⁹ See RRB Economics paper on "Belgium: an assessment of the potential for portfolio effects covering HHT and toilet paper (supplementary note)" (submitted on 14 June 2012) and Morrison & Foerster slide presentation "Call with the European Commission – Case M.6455 – SCA/Georgia Pacific – the Netherlands, Belgium and Sweden", 21 June 2012, slides 10-12.

⁸⁰ See replies to the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Consumer Tissue Customers – Belgium/Luxembourg (Q2), dated 16 May 2012.

⁸¹ See (i) RRB Economics paper on "Belgium: an assessment of the potential for portfolio effects covering HHT and toilet paper (supplementary note)" (submitted on 14 June 2012); (ii) RBB Economics paper on "Belgium: an assessment of the potential for portfolio effects covering HHT and toilet paper" submitted on 13 June 2012 and (iii) Morrison & Foerster slide presentation "Call with the European Commission – Case M.6455 – SCA/Georgia Pacific – the Netherlands, Belgium and Sweden", 21 June 2012, slides 10-12.

supply, the Belgium market. As it is shown by the Table above, Metsä, Sofidel, Wepa and others already supply the Belgium market. There are at least 10 other tissue manufacturers that are well placed to enter or expand the supply of private labels HHT and TP in Belgium as they have spare capacity and are located within a 500 km radius of Brussels, a distance over which private label products can be efficiently transported.

- (160) In addition, switching costs are negligible in the case of private labels because retailers own and control the specifications of the products and suppliers with spare rolled conversion capacity are able to meet these requirements without difficulty. The evidence of such switching has just occurred since [...].
- (161) Finally, retailers contacted during market investigation indicated that high wholesale prices are generally not accepted unless objectively justified (e.g. raw material costs). This is because retailers are (at least partly) constrained in their ability to "pass on" price increases to final consumers (due to competition from other retailers).⁸²

Conclusion

- (162) In view of the above, and in particular of the high level of competition in the market for the supply of private label TP and HHT in Belgium, it is considered that the proposed transaction does not raise serious doubts in Belgium/Luxembourg for the supply of manufacturer brands and retailer brands whether considered individually or in combination.

IV.3.3.3 Denmark

IV.3.3.3.1 Production and supply of branded TP and HHT

- (163) In Denmark, the Parties' combined market share in TP is [30-40]% with [0-5]% increment due to SCA. The Parties' main competitors on this market are Metsä ([30-40]%) and Kimberly-Clark ([20-30]%).
- (164) As regards HHT the transaction would not lead to an affected market as the Parties' combined market share is only [10-20] % with a negligible overlap of [0-5] %.
- (165) The Parties submit that no competition concerns will arise on this market for the following reasons: (i) retailers will continue to have a significant choice of suppliers for the supply of their branded CT products from suppliers including Kimberly-Clark, Metsä, Wepa and Sofidel; (ii) SCA supplies only small volumes of branded CT products; (iii) products supplied are currently manufactured in numerous countries (Sweden, Norway, Germany, Austria and Hungary) and (iii) the existing overcapacity and proximity to other EEA countries means that there is no shortage of suppliers able to supply retailers with sufficient quantities of product as demonstrated by new entrants Vajda and Grigiskes.

⁸² See replies to question 43 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Consumer Tissue Customers – Belgium/Luxembourg (Q. 2), dated 16 May 2012.

- (166) The market investigation has confirmed that the supply of branded CT products is and will remain competitive in Denmark based on the fact that a number of strong alternative suppliers supply products to retailers,⁸³ namely Metsä or Kimberly-Clark.
- (167) On the basis of the foregoing and, in particular, that the market investigation has not raised concerns, it is concluded that the transaction does not raise serious doubts as regards the markets for the supply of branded CT products in Denmark.

IV.3.3.4 Finland

IV.3.3.4.1 Production and supply of private label CT products

- (168) In Finland, the Parties' combined market share in TP is [30-40]% (increment of [20-30]% due to GPE). Metsä will remain the largest supplier with a share of [30-40]%. Wepa has entered the market and has a share of [20-30]%. In HHT, the Parties' combined market share is [30-40]% (increment of [20-30]% due to GPE). Wepa will remain the largest supplier with a share of [40-50]% and Metsä has a share of [20-30]%. In Ha/Fa, the Parties' combined market share is [20-30]% (increment of [20-30]% due to GPE). Metsä will remain the largest supplier with a share of [30-40]%
- (169) The Parties submit that private labels account for [10-20]-[20-30]% of total volumes in the relevant product markets and that no competition concerns will arise on this market for the following reasons: (i) the market is characterised by very significant retailer concentration and significant retailer buying power; (ii) branded CT products predominate and private labels represent only a small portion of the consumer tissue market and (iii) the market has two major suppliers (Metsä and GPE) both of which have local production facilities.
- (170) The market investigation has confirmed that the supply of private labels is and will remain competitive in Finland due to the fact that there is another strong competitor, namely Metsä with the same capacity as GPE and SCA⁸⁴ and the transaction will not increase SCA and GPE's negotiating power.⁸⁵
- (171) In view of all of the above and of the fact that no competition concerns were raised with regard to this market, it is concluded that the transaction does not raise serious doubts as regards the markets for the supply of private label CT products in Finland.

⁸³ See replies to question 37 of the of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Consumer Tissue Customers – Denmark (Q. 3) of 16 May 2012.

⁸⁴ See replies to question 82 of the of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Consumer Tissue Customers – Finland (Q. 53) of 16 May 2012.

⁸⁵ See replies to question 86 of the of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Consumer Tissue Customers – Finland (Q. 53) of 16 May 2012 and replies to question 111 of the of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Consumer Tissue Competitors – Finland (Q. 13) of 16 May 2012.

IV.3.3.5 France

IV.3.3.5.1 Production and supply of private label CT products

(172) The Parties overlap in the supply of private labels to retailers in France. In TP, the Parties' combined market share is [40-50]% with [10-20]% increment due to GPE. The main competitors are Wepa ([10-20]%), followed by Lucart and Sofidel each with [10-20]%. In HHT, the Parties' combined market share is [40-50]% (increment [10-20]% due to GPE), with competitors such as Sofidel ([20-30]%) and Lucart ([10-20]%). In Ha/Fa, the Parties' combined market share is [30-40]% (increment [5-10]% due to GPE) and the main competitors are Sofidel ([20-30]%), and Wepa ([10-20]%). In napkins, the Parties' combined market share is [50-60]%, (increment of [0-5]% due to SCA) with Metsä ([5-10]%), Wepa ([0-5]%) and others ([30-40]%).

Table 3: Market shares in private label CT products (France)

| FRANCE 2010 VALUE | SUPPLIER | SUPPLY OF PRIVATE LABELS (%) |
|-------------------------|-----------------|------------------------------------|
| TP | SCA | [30-40] |
| | GPE | [10-20] |
| | Combined | [40-50] |
| | Wepa | [10-20] |
| | Sofidel | [10-20] |
| | Lucart | [10-20] |
| | ICT | [5-10] |
| | Metsä | [5-10] |
| | Systemhandel | [0-5] |
| HHT | SCA | [20-30] |
| | GPE | [10-20] |
| | Combined | [40-50] |
| | Sofidel | [20-30] |
| | Lucart | [10-20] |
| | Wepa | [5-10] |
| | Metsä | [5-10] |
| | ICT | [0-5] |

| | | |
|----------------|-----------------|----------------|
| Ha/Fa | SCA | [30-40] |
| | GPE | [5-10] |
| | Combined | [30-40] |
| | Kimberly-Clark | [5-10] |
| | Sofidel | [20-30] |
| | Wepa | [10-20] |
| | ICT | [5-10] |
| | Systemhandel | [0-5] |
| | Lucart | [0-5] |
| | Metsä | [0-5] |
| Napkins | SCA | [0-5] |
| | GPE | [50-60] |
| | Combined | [50-60] |
| | Metsä | [5-10] |
| | Wepa | [0-5] |
| | Others | [30-40] |

Source: Form CO

- (173) The Parties submit that no competition concerns will arise in France for the following reasons: (i) the retail environment is highly competitive and have large powerful retailers; (ii) the merged entity will continue to face competition from Kimberly-Clark, Sofidel and Renova, in addition to private labels and (iii) the existing capacity of all players (including ICT, Lucart, Sofidel and Wepa) together with upcoming additional capacity from ICT and Sofidel puts pressure on the market and ensures no shortage of suppliers able to supply retailers with private labels.
- (174) During the market investigation, Agenor, a buying group for Intermarché, Edeka and Eroski, has expressed concerns that all private label products will be impacted by the transaction as there would be a reduction in the number of suppliers of CT products manufactured with the Through-Air Drying ("TAD") technology.⁸⁶
- (175) The market investigation has confirmed that, in Europe, there are few suppliers that have the TAD technology and these are SCA, GPE, Sofidel and Kimberly-Clark.⁸⁷
- (176) However, the TAD technology does not appear to be a proprietary technology. According to the Parties, as well as the market respondents, the use of this technology is limited because it uses more energy (as compared to traditional technology) which, given the ever increasing energy costs, has a repercussion on the production costs. Therefore, investment in TAD technology is less attractive to producers.

⁸⁶ See non-confidential minutes of call with Agenor, 11 June 2012.

⁸⁷ See replies to questions 86 and 86.1 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Consumer Tissue Customers – France (Q. 52) of 16 May 2012.

- (177) Further, retailers seeking alternative suppliers of private labels could turn to Sofidel, Wepa or Metsä tissue. Sofidel also supplies CT products with TAD technology. Finally the market investigation has not confirmed the concerns expressed by Agenor. The Commission therefore concludes that no serious doubts are likely to arise in the private label HHT market.
- (178) Further on the basis of the *de minimis* overlap in napkins and the lack of concerns expressed during the market investigation with regards to TP, Ha/Fa and napkins, it is concluded that the transaction does not raise serious doubts as regards the markets for the supply of private label CT products in France.

IV.3.3.6 Greece/Cyprus

IV.3.3.6.1 Production and supply of branded CT products

- (179) In Greece, the Parties' activities overlap in the supply of branded CT products to retailers with the following combined market shares; TP ([20-30]%, with [10-20]% increment due to GPE), HHT ([40-50]%, with [20-30]% increment due to GPE), Ha/Fa ([30-40]%, with [10-20]% increment due to GPE) and napkins ([20-30]%, with [10-20]% increment due to GPE).
- (180) The Parties submit that no competition concerns will arise on this market for the following reasons: (i) many suppliers will continue to be present on the market and (ii) there is a potential for other suppliers to develop branded CT products if demand exists.
- (181) The market investigation has confirmed that the supply of branded CT products is and will remain competitive in Greece based on the number of strong alternative suppliers⁸⁸, namely Kimberly-Clark, Renova or Vassilopoulos and that the trend is for a greater role for private labels which constitute a competitive alternative to private labels in terms of quality and price compared to branded product.⁸⁹
- (182) In view of the above and in the absence of competition concerns during the market investigation, it is concluded that the transaction does not raise serious doubts as regards the markets for the supply of branded CT products in Greece.

IV.3.3.6.2 Production and supply of private label CT products

- (183) In Greece, the combined market shares of the Parties are low in TP ([10-20]%) and HHT ([0-5]%). The combined entity would have only a [0-5]% market share in napkins and there would be no increment in market share. Consequently, these market shares do not result in any affected markets.

⁸⁸ See replies to questions 37 and 52 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Consumer Tissue Customers – Greece (Q. 5) of 16 May 2012.

⁸⁹ See replies to question 73 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Consumer Tissue Customers – Greece (Q. 5) of 16 May 2012.

(184) As a result, it is concluded that the transaction does not raise serious doubts as regards the markets for the supply of private label CT products in Greece/Cyprus.

IV.3.3.7 Spain

IV.3.3.7.1 Production and supply of branded Ha/Fa

(185) The Parties' activities overlap in relation to the production and supply of branded Ha/Fa. The combined market share of the Parties for Ha/Fa would amount to [30-40] % as SCA has a market share of [10-20]% and GPE a market share of [20-30]%. Kimberly-Clark will remain the largest supplier with a share of [40-50]% in Ha/Fa.

(186) The Parties submit that no competition concerns will arise on this market for the following reasons: (i) a number of strong alternative suppliers supply products to retailers, namely Kimberly-Clark, Gomà-Camps, Renova, Sofidel, ICT and others; (ii) there is an existing over-capacity which means that there are suppliers, including from neighbouring regions, able to supply retailers in Spain with sufficient quantities of products and (iii) retailers will continue to have a choice of suppliers for the supply of their branded CT product and private labels.

(187) The market investigation has confirmed that the supply of branded products is and will remain competitive in Spain since there will remain a number of strong alternative suppliers,⁹⁰ and the transaction will not increase SCA and GPE's negotiating power⁹¹.

(188) On the basis of the foregoing and, in particular, on the lack of concerns, it is concluded that the transaction does not raise serious doubts as regards the markets for the supply of branded CT products in Spain.

IV.3.3.7.2 Production and supply of private label TP

(189) SCA has a strong position in the supply of private label CT in Spain due to one contract with a major supermarket group. However, the Parties' activities overlap only in the supply of private labels to retailers in TP ([50-60]% combined market share with [0-5]% increment).

⁹⁰ See replies to question 56 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Consumer Tissue Customers – Spain (Q. 7) of 16 May 2012.

⁹¹ See reply to question 86 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Consumer Tissue Customers – Spain (Q. 7) of 16 May 2012.

Table 4: Market shares in private label CT products (Spain)

| SPAIN 2010 VALUE | SUPPLIER | SUPPLY OF PRIVATE LABELS (%) |
|------------------------|----------------------|---------------------------------------|
| TP | SCA | [50-60] |
| | GPE | [0-5] |
| | Combined | [50-60] |
| | Sofidel | [0-5] |
| | ICT | [10-20] |
| | Kartogroup Espana | [10-20] |
| | Gomà-Camps | [5-10] |
| | Wepa | [5-10] |
| | Cartiera Lucchese | [0-5] |
| | Others | [0-5] |

Source: Form CO

- (190) During the market investigation, one customer expressed concerns that all private label products will be impacted by the transaction due to the fact that there are already very few suppliers in the CT sector and that the transaction will lead to a reduction in the number of suppliers.⁹²
- (191) However, as seen from the Table above, there is only a *de minimis* overlap as GPE's market share is [0-5]% and that the market investigation has not raised further major concerns. In addition, there remain a number of private label suppliers with important market shares on the Spanish TP market, such as ICT ([10-20]%), Kartogroup Espana ([10-20]%) and Gomà-Camps ([5-10]%).
- (192) In light of the above, it is concluded that the transaction does not raise serious doubts as regards the markets for the supply of private label CT products in Spain.

Markets with serious doubts

IV.3.3.8 The Netherlands

- (193) In the Netherlands, the Parties' activities overlap in the supply of branded TP, HHT and Ha/Fa. They also overlap in the supply of private label HHT.
- (194) The market investigation did not raise concerns as regards branded TP. The Parties would have a combined market share of [30-40]%, with a relatively low increment ([5-10]% by GPE). The market leader is Kimberly-Clark with a [60-70]% market share. Kimberly-Clark is a strong competitor, whose market share has steadily increased over the last few years (from [40-50]% in 2008 to [60-70]% in 2010). The same conclusion

⁹² See replies to question 86.1 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Consumer Tissue Customers – Spain (Q. 7) of 16 May 2012.

applies to the supply of branded Ha/Fa where the combined market share of the Parties is [40-50]%, the increment by GPE ([0-5]%) is *de minimis* and Kimberly-Clark remains the market leader with [50-60]% of the Dutch market.

- (195) However, a number of market respondents raised concerns in the supply of branded HHT and the supply of private label HHT in particular that produced with the TAD technology. These markets are assessed below.

IV.3.3.8.1 Production and supply of branded HHT

- (196) The Table below shows the parties' and their main competitors' market shares based on value in the Netherlands.

Table 5: Market shares in branded HHT products (Netherlands)

| THE NETHERLANDS 2010 VALUE | SUPPLIER | SUPPLY OF BRANDED PRODUCTS (%) |
|---|-----------------|---|
| HHT | SCA | [10-20] |
| | GPE | [50-60] |
| | Combined | [70-80] |
| | Kimberly-Clark | [20-30] |

Source: Form CO

- (197) The new entity would have a relatively high market share on the market for the supply of branded HHT. The Parties' combined market share (in value, 2010) is [70-80]%, with the next competitor Kimberly-Clark, representing [20-30]%. Therefore, on this market, the transaction would bring together the market leader and one of its main competitors with a very sizeable market share increment. Kimberly-Clark would account for a (comparatively) lower market share and left as the only alternative.
- (198) The flagship HHT brand owned by GPE is *Lotus*. SCA supplies HHT under the *Plenty* brand (formerly *Edet*). Kimberly-Clark's brand is *Page*.
- (199) The Parties advanced a number of arguments to demonstrate that their high and long-lasting market shares could be mitigated by the following factors: (i) the Dutch market is characterised by a high level of penetration of private labels that constraint the manufacturers of branded products; (ii) the market is characterised by very significant retailer concentration and buyer power: the top 5 retailers account for [60-90] % of all consumer tissue sales⁹³; and (iii) a number of different consumer tissue manufacturers currently, and will continue to, supply branded products to retailers.

⁹³ Form CO, page 284.

- (200) However, during the market investigation,⁹⁴ a number of customers have expressed concerns with respect to branded HHT in the Netherlands. The analysis of the data and of the qualitative information provided by the Parties and/or gathered by the Commission corroborates the result of the market investigation.

Lack of significant competition constraints on SCA and GPE by private labels

- (201) Although according to the Parties, private labels account for around [80-90]% of sales of HHT by volume and [70-80]% by value,⁹⁵ this level of penetration has remained relatively steady, implying that brands have managed to maintain their strength during the last few years. The graph below shows that the HHT Dutch market is relatively mature and steady, with no important developments during the last few years..

Graph 1: Analysis of private level penetration compared to top 3 brands in the Netherlands

[...]

Source: Commission analysis based on Nielsen data

- (202) The respective market shares of branded HHT fluctuate only over the short term due to the significant level of promotions.
- (203) The Parties have put forward the importance of promotion in driving short term share in the Netherlands where [50-80]% of branded HHT were sold on promotions in 2011.⁹⁶ End-customers would tend to buy on promotions and stock that brand. The Parties therefore stressed that promotions are key for branded products to gain volumes in the face of competition towards lower priced retailer brands. Failure to gain promotional slots would have a significant adverse impact on volume share within a given retailer⁹⁷ and could even trigger de-listing due to insufficient rotation and use of shelf space for the retailer.⁹⁸
- (204) The graphs below, based on Nielsen data for 2011 for two of the largest supermarket chains in the Netherlands support the views that the vast majority of volumes of the branded goods are sold during promotions and that generally supermarkets set a fix and non-overlapping number of promotional slots within one year and manufacturers of the brands compete for those slots.

⁹⁴ See replies to questions 85 to 89.2 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Consumer Tissue Customers – The Netherlands (Q. 6), dated 16 May 2012.

⁹⁵ Annex 39 of the Form CO.

⁹⁶ See (i) Morrison & Foerster slide presentation "Call with the European Commission – Case M.6455 – SCA/Georgia Pacific – the Netherlands, Belgium and Sweden", 21 June 2012, slide 7; (ii) RRB Economics paper on "The Netherlands: the competitive effects of the SCA and GPE transaction on the supply of HHT" (submitted on 11 June 2012); and (iii) RBB Economics paper "Response to EC questions regarding the supply branded HHT in the Netherlands" (submitted on 25 June 2012).

⁹⁷ See RRB Economics paper on "The Netherlands: the competitive effects of the SCA and GPE transaction on the supply of HHT" (submitted on 11 June 2012), page 4.

⁹⁸ See Morrison & Foerster slide presentation "Call with the European Commission – Case M.6455 – SCA/Georgia Pacific – the Netherlands, Belgium and Sweden", 21 June 2012, slide 7.

Graph 2: Analysis of interactions between sales and promotions in two biggest supermarkets in the Netherlands

[...]

Source: Commission analysis based on Nielsen data

- (205) The high peaks of branded products sales at certain moments and the relatively much lower and flatter sales in periods without promotions is indicative of consumers' stocking behaviour. These trends are not indicative however of demand substitution between the various brands on the market as it is not clear whether final consumers buy and stock any brand that is promoted or whether they wait until their most preferred brand is promoted before replenishing their stocks. In that respect, all brands behave similarly and the promotions on HHT branded products do not normally coincide. In any event, the level of sales of branded HHT remains stable on a long term basis.
- (206) The Parties have attempted to analyse short-term switching patterns between manufacturer branded HHT and private labels. They found that in promotion periods, when only one brand is promoted, other brands do increase their sales to any significant degree, but to the extent that there is a switch to the promoted brand it comes mainly from private labels. However Nielsen data seem to indicate that HHT products are vertically differentiated on a scale from very low priced retailer brands to very expensive variants of the manufacturer brands. In this setting, switching from private labels to manufacturer brands during promotions is not indicative for demand substitution as the vertical differentiation intuitively induces migration to higher quality products when the price gap is reduced. On the contrary, if indeed private labels were to constrain significantly the manufacturer brands, one should observe a certain percentage of consumers switching to private labels when the relative price of manufacturer brands increases (during private labels promotions for example). However, evidence in this direction is extremely limited. It is not surprising though that short term switching patterns are not conclusive for either substitution among manufacturer brands or substitution between brands and private labels, as the sales of the brands are very low during non-promotion periods. Competition in this market seems to be concentrated on fighting for promotional slots against the rival brands rather than fighting for customers from other brands during promotions.
- (207) The market investigation has confirmed that brand manufacturers compete against each other for promotions slots. Moreover, it also indicated that a certain percentage of end-consumers only purchase branded HHT, independently of promotions. Hence retailers cannot do without the brands and, in order to maintain competition on the branded segment, they need to multi-source.
- (208) In a multi-sourcing environment, in order to benefit from competitive wholesale prices retailers generally confirm that they need to have three suppliers of manufacturer HHT brands.
- (209) Furthermore, an additional argument put forward in the market investigation by some important retailers is the fact that they use the price in the branded segment as a benchmark for pricing their private labels. This shows the key role of the branded segment competition in maintaining the overall competitiveness in the HHT market.

- (210) Given the above, it cannot be concluded that the Dutch market is characterised by strong competitive constraints exerted by private labels on branded products that could dispel the serious doubts raised by the market investigation as regards the impact of the proposed transaction on branded HHT.

Lack of sufficient countervailing buyer power

- (211) The Parties argued that retailers have strong buyer power. In the Netherlands [60-70]%⁹⁹ of overall HHT sales are made through only three retailers groups/purchasing organizations: (i) AMS for the Albert Heijn (ICA/Ahold) retail chains; (ii) Superunie for, *inter alia*, Boni, Coop, Hoogvliet, Spar and (iii) Bijeen, for, *inter alia*, CT 1000, Jumbo. Retailers can and do actually delist. They can reduce the available promotional slots that are a key factor for driving sales and can easily switch to increasing their private labels' offers at the expense of branded products as consumers' choice is largely dependent upon price.
- (212) However, major retailers in the Netherlands have indicated¹⁰⁰ that a three to two merger in the market for the supply for branded HHT would trigger limited competition and fewer alternatives to the detriment of final customers. Most of the retailers negotiate with all three main suppliers (GPE, Kimberly-Clark and SCA) for the procurement of HHT branded products and most of them have a multi-sourcing strategy, with a significant number of retailers displaying the three brands on their shelves.¹⁰¹ The leverage given by the existence of a third alternative supplier would therefore disappear as a result of the transaction. The loss of negotiation power would increase the risk that the wholesale price would go up.
- (213) It is not sufficient that buyer power exists prior to the merger; it must also exist and remain effective following the merger. This is because a merger between two suppliers may reduce buyer power if it thereby removes a credible alternative.¹⁰² In the Commission's view, a significant supply alternative will be removed and the choice will be limited as the Parties would have [...] of current sales in the market for branded HHT with no other rival than Kimberly-Clark.
- (214) In conclusion post-merger countervailing buyer power does not seem sufficiently strong to offset the potential adverse effects resulting from this transaction.

⁹⁹ [30-40]% of total HHT sales in 2011 in the Netherlands were done in hard-discounters (Aldi, Lidl).

¹⁰⁰ See replies to questions 85 to 89.2 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Consumer Tissue customers – The Netherlands (Q. 6), dated 16 May 2012.

¹⁰¹ See replies to question 8 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Consumer Tissue Customers – The Netherlands (Q. 6), dated 16 May 2012. See non-confidential minutes of call with C1000, 22 June 2012.

¹⁰² Commission Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 31, 5.2.2004, p. 5, para. 67.

Lack of market entry

- (215) The Parties have argued that manufacturers in neighbouring countries (such as Belgium) could easily supply Dutch retailers if demand exists. In addition, the existing over capacity in the regions means that there is no shortage of suppliers able to supply retailers with sufficient quantities of products.
- (216) However, most of the market respondents indicated that they would not have any other alternatives as they do not expect any entry in the near future. Furthermore, Nielsen data indicates that the HHT market in the Netherlands is a mature market, with no significant entry or development during the last few years.
- (217) The lack of successful entry in the market and the confirmation from the market investigation that no entry has been and would be successful in the near future in the Netherlands therefore leads to the conclusion that market entry would not be likely to offset the potential adverse effects resulting from this transaction.

Conclusion

- (218) In view of the above, the Commission considers that the transaction as originally notified raises serious doubts as to its compatibility with the internal market with respect to the market for the supply of branded HHT in the Netherlands.

IV.3.3.8.2 Production and supply of private label HHT

- (219) The Table below shows the Parties' and their main competitors' market shares based on value in the Netherlands.

Table 6: Market shares in private label CT products (Netherlands)

| THE NETHERLANDS 2010 VALUE | SUPPLIER | SUPPLY OF PRIVATE LABELS (%) |
|---|-----------------|---|
| HHT | SCA | [10-20] |
| | GPE | [20-30] |
| | Combined | [30-40] |
| | Wepa | [50-60] |
| | Sofidel | [0-5] |
| | Metsä | [0-5] |

Source: Form CO

- (220) As can be seen from the above Table, the new entity would have a market share just below [40-50]% on the market for the supply of private labels HHT. The market leader is Wepa with [50-60]%. Sofidel has [0-5]% and Metsä only [0-5]%.
- (221) The Parties did not consider that the present concentration would have a significant impact on competition on the supply of private label HHT in the Netherlands for a number of reasons. First, there is a significant retailer concentration and buyer power

(the top 5 retailers account for [60-90] % of all consumer tissue sales¹⁰³). In 2011, more than [90-100]% of each of SCA and GPE's private label HHT sales was made through one customer ([...] in the case of SCA and [...] in the case of GPE).¹⁰⁴ Secondly, Wepa is very successful as demonstrated by its market shares that have increased substantially since 2008¹⁰⁵ from [20-30]% to [50-60]% in 2010 (in value). Thirdly, there is an abundance of private labels' manufacturers that currently, and will continue to, supply retailers. Fourthly, the existing over capacity in the region means that there is no shortage of suppliers able to supply retailers with sufficient quantities of products. Fifthly, manufacturers in neighbouring countries (such as Belgium) can easily supply Dutch retailers if demand exists.

- (222) The majority of respondents to the market investigation has confirmed the Parties' views as to the competitive assessment of the transaction and have not raised any concerns as regard the supply of private labels HHT.

Through-Air Drying technology

- (223) In the market investigation, a large retail chain in the Netherlands, has raised concerns¹⁰⁶ regarding the transaction, as it would decrease the numbers of suppliers that have TAD technology. TAD is a technology, which due to a specific and dedicated paper machine allows for the wet tissue sheet to be dried by blowing hot air through it instead of being dried on a hot cylinder. As a consequence of this drying, HHT is much stronger and absorbent.
- (224) In the Netherlands, this customer is supplied almost exclusively by SCA with private labels HHT. That customer claims that it would hardly have any leverage in its negotiations with SCA, should the merged entity, post-transaction, raise its price in TAD HHT. The only alternative suppliers would be GPE and Sofidel, but none of them are credible suppliers.
- (225) The market investigation¹⁰⁷ has confirmed that, in Europe, there are relatively few suppliers that have the TAD technology and these are SCA, GPE, Sofidel and Kimberly-Clark. Most importantly, it has supported the Parties' claims¹⁰⁸ that the Parties are not important competitors as regards the supply of private label TAD HHT and that the TAD technology does not lead to the production of clearly consumer preferred products in the Netherlands for a number of reasons. First, TAD technology has a low level of penetration in the Netherlands. Second, the Parties do not overlap as GPE does

¹⁰³ Form CO, page 284.

¹⁰⁴ See RRB Economics paper on "The Netherlands: the competitive effects of the SCA and GPE transaction on the supply of HHT" (submitted on 11 June 2012), pages 14 and 15.

¹⁰⁵ Wepa acquired Kartogroup in 2008.

¹⁰⁶ See non-confidential minutes of calls with a customer, 6 and 14 June 2012.

¹⁰⁷ See non-confidential minutes of call with Wepa, 12 June 2012 and non-confidential of minutes of call with Sofidel, 14 June 2012.

¹⁰⁸ RRB Economics paper on "The Netherlands: an assessment of the relevance of TAD tissue to the competitive effects of the SCA and GPE transaction on the supply of HHT" (submitted on 12 June 2012).

not, and has not over the past three years, supplied private labels TAD HHT in the Netherlands.¹⁰⁹ Third, the production technology used to generate HHT is not reported on the packaging. Dutch consumers therefore do not distinguish between HHT based on the technology used.¹¹⁰ Fourth, the TAD technology does not appear to be a proprietary technology. According to the Parties as well as to the market respondents, the use of this technology is limited because it uses more energy (as compared to traditional technology) which, given the ever increasing energy costs, has a repercussion on production costs. Therefore, investment in TAD technology is less attractive to producers.

Conclusion

(226) In view of the above, the Commission considers that the proposed transaction does not raise serious doubts as regards the market for the supply of private label HHT in the Netherlands.

IV.3.3.9 Sweden

(227) In Sweden, the Parties overlap in the supply of branded TP and HHT. They also overlap in the supply of private label TP and HHT.

(228) For branded TP and HHT, the Parties would have a combined market share of [30-40]% for TP and [20-30]% for HHT with only a marginal market share increment ([0-5]% by GPE for each of TP and HHT).

(229) On the basis of the *de minimis* overlap and the lack of concerns expressed during the market investigation with regards to these markets, the Commission has concluded that the transaction does not raise serious doubts in the markets for branded TP and HHT in Sweden.

(230) However, the transaction raised concerns in the supply of private label TP and HHT. These markets are assessed below.

IV.3.3.9.1 Production and supply of private label TP and HHT

(231) The Parties' activities in relation to the production and supply of private label overlap in relation to TP and HHT. The Table below shows the Parties' and their main competitors' market shares based on value in 2010. In the market for TP, the Parties' combined market shares would be high ([60-70]%) with Metsä a distant second ([10-20]%) and Wepa in third position with [10-20]%. In the market for HHT, the Parties' combined market shares would be even higher ([60-70]%) with Metsä a distant second ([10-20]%) and Wepa in third position with [10-20]%.

¹⁰⁹ RRB Economics paper on "The Netherlands: an assessment of the relevance of TAD tissue to the competitive effects of the SCA and GPE transaction on the supply of HHT" (submitted on 12 June 2012).

¹¹⁰ The TAD technology cannot be seen a separate product market as there is no specific demand from the end-consumer and it appears that this technology is readily available in Europe.

Table 7: Market shares in private label CT products (Sweden)

| SWEDEN | | SUPPLY OF PRIVATE LABEL |
|---------------|-----------------|--------------------------------|
| 2010 | SUPPLIER | (%) |
| VALUE | | |
| TP | SCA | [40-50] |
| | GPE | [20-30] |
| | Combined | [60-70] |
| | Metsä | [10-20] |
| | Wepa | [10-20] |
| | Sofidel | [0-5] |
| HHT | SCA | [40-50] |
| | GPE | [20-30] |
| | Combined | [60-70] |
| | Metsä | [10-20] |
| | Wepa | [10-20] |

Source: Form CO

- (232) The Parties submit that no competition concerns will arise on these markets for the following reasons: (i) high retail concentration and buyer power; (ii) the existence of alternative suppliers that will continue to be present on the market (namely Metsä, Sofidel and Wepa) and (iii) the existing overcapacity in Europe means that there is no shortage of suppliers able to supply retailers with sufficient quantities of product.¹¹¹
- (233) However, a number of customers and competitors have expressed concerns with respect to the production and supply of private label TP and HHT in Sweden. In fact, customers considered that it is hard to find suppliers and stressed the importance of having a conversion plant (i.e. the capability of converting parent reels into final tissue products) in the region.¹¹² The market investigation also indicated that unlike many other European countries, the capacity utilization is high in the Nordic region.¹¹³ It was

¹¹¹ Form CO, page 305 and RBB Economic paper on "Retailer branded supply in Sweden" (submitted on 13 June 2012).

¹¹² See replies to question 9 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Consumer Tissue Customers – Sweden (Q. 8), dated 16 May 2012 and non-confidential minutes of call with Ahold/ICA, 6 June 2012.

¹¹³ See (i) replies to question 84 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Consumer Tissue Customers – Sweden (Q. 8), dated 16 May 2012, (ii) reply to question 24 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Consumer Tissue Competitors – Sweden (Q. 18), dated 16 May 2012, (iii) non-confidential minutes of call with Sofidel, 14 June 2012 and (iv) non-confidential minutes of call with Wepa, 12 June 2012.

further confirmed that besides the Parties, only Metsä has conversion plants for TP and HHT in the Nordic countries.¹¹⁴

- (234) The following sections assess the markets for production and supply of private label TP and HHT in Sweden. As the situation is the same for both markets concerned they will be discussed jointly.

Transport costs

- (235) The Parties argue that both Sofidel and Wepa will continue to be present on the market for the supply of private label TP and HHT. However, neither Sofidel nor Wepa has conversion plants for TP and HHT in the Nordic countries.¹¹⁵ Sofidel's tissue mill, used for the supply of private label TP and HHT to Sweden is located in Arneburg in Germany,¹¹⁶ 832 km¹¹⁷ from Stockholm. The supply from Wepa also comes from their mills in Germany.¹¹⁸
- (236) Transport costs constitute a significant obstacle to supplying converted products over large distances due to the fact that tissue products are characterised by a high volume-to-value ratio. Consumer tissue products (especially rolled ones like TP and HHT that are more voluminous due to the air contained in the rolls) cannot efficiently be transported too far away from their place of production.
- (237) The market investigation has confirmed that transport costs are an important proportion of the total cost.¹¹⁹ The Scandinavian region and Sweden in particular are different from most the other markets in mainland Europe due to their remote position. As can be seen from the graphs below, the vast majority of SCA's own production is transported and sold within a radius of less than approximately [...] km from the plant where it is

¹¹⁴ See replies to question 24 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Consumer Tissue Competitors – Sweden (Q. 18), dated 16 May 2012 and non-confidential minutes of call with Sofidel, 14 June 2012.

¹¹⁵ See replies to question 24 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Consumer Tissue Competitors – Sweden (Q. 18), dated 16 May 2012 and non-confidential minutes of call with Sofidel, 14 June 2012.

¹¹⁶ See non-confidential minutes of call with Sofidel, 14 June 2012.

¹¹⁷ See RBB Economic paper on "Retailer branded supply in Sweden" (submitted on 13 June 2012), page 12.

¹¹⁸ See non-confidential minutes of call with Wepa, 12 June 2012.

¹¹⁹ See (i) non-confidential minutes of call with Ahold/ICA, 6 June 2012, (ii) non-confidential minutes of call with Coop, 5 June 2012, (iii) non-confidential minutes of call with Sofidel, 14 June 2012 and (iv) non-confidential minutes of call with Wepa, 12 June 2012.

produced.¹²⁰ Furthermore, amongst the competitors active in Sweden, the maximum transport distance for private label TP and HHT was said to be [...] km.¹²¹

Picture 1: Analysis of transport cost of private label CT products in Sweden

[...]

Source: Commission analysis based on 2011 raw data (provided by SCA) on the distribution of SCA sales from various plants in Europe.

- (238) The market investigation and the transport data from SCA clearly indicate that, in order to sell in Sweden at competitive prices, a manufacturer needs to have a plant either in the country or in a country neighbouring Sweden (such as Norway or Finland).¹²²

Lack of sufficient countervailing buyer power

- (239) The Parties argue¹²³ that retailers have buyer power since they own and control the specification of the retailer brand, such that any manufacturer who can supply such specifications and has sufficient spare capacity can compete for the supply of the products in question. They further argue that sponsoring entry and growth is relatively easy for retailers given the concentrated nature of retail supply in Sweden.
- (240) Countervailing buyer power cannot be found to sufficiently offset potential adverse effect of a merger if it only ensures that particular segment of customers, with particular bargaining strength, is shielded from significantly higher prices or deteriorated conditions after the merger. It is furthermore not sufficient that buyer power exists prior to the merger; it must also exist and remain effective following the merger. This is because a merger between two suppliers may reduce buyer power if it thereby removes a credible alternative.¹²⁴ In the Commission's view, a significant supply alternative will be removed and the choice will be limited as the Parties would have around two thirds of current sales in the markets for TP and HHT and no other producer but Metsä would have a plant in the Nordic region.

¹²⁰ The RBB Economic paper on "Realised transport distance – Away from Home and Consumer Tissue products supplied by SCA" (submitted on 19 March 2012), shows that the aggregate transport distance (across SCA mills), at 80th percentile in volume, is [...] km for HHT-retailer brand and [...] km for TP-retailer brand.

¹²¹ See replies to question 55 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Consumer Tissue Competitors – Sweden (Q. 18), dated 16 May 2012.

¹²² See (i) replies to question 9 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Consumer Tissue Customers – Sweden (Q. 8), dated 16 May 2012, (ii) reply to questions 62, 75 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Consumer Tissue Competitors – Sweden (Q. 18), dated 16 May 2012, (iii) non-confidential minutes of call with Ahold/ICA, 6 June 2012, (iv) non-confidential minutes of call with Sofidel, 14 June 2012 and (v) non-confidential minutes of call with Wepa, 12 June 2012.

¹²³ See RRB Economics paper on "Retail branded supply in Sweden" (submitted on 13 June 2012).

¹²⁴ Commission Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 31, 5.2.2004, p. 5, para. 67.

- (241) Furthermore, it is easy to price discriminate between different customers as tissue products are delivered according to customers' specifications and thus are customized products. Hence, even if the largest customers would be able to exercise some countervailing buyer power this would not protect smaller customers and the Parties would still be able to raise prices above the pre-merger level.
- (242) In the Commission's view, such "buyer power" as may exist would, therefore, not prevent the creation of a lasting dominant position as a result of the merger.

Market entry and capacity

- (243) The Parties argue that the existing overcapacity in Europe means that there is no shortage of suppliers able to supply retailers with sufficient quantities of product. The market investigation has however indicated that unlike many other European countries, the capacity utilization is high in the Nordic region.¹²⁵
- (244) Respondents to the market investigation also take the view that entry with new capacity in Sweden is unlikely due to high entry barriers.¹²⁶ There are significant costs and time involved in establishing new production capacity.
- (245) SCA estimates that it will cost around EUR [...]million to EUR [...] million to buy a new converting machine for rolled products (i.e. TP and HHT). The time scale for delivery of new equipment is close to one year. Following the delivery of the equipment, a further period will be required for installation/start-up.¹²⁷
- (246) For these reasons, the Commission concludes that entry with new capacity in Sweden is unlikely and that in any event it would take a couple of years before a new competitor entering with new capacity could exert an effective competitive constraint on the Parties.

Conclusion

- (247) Given the very strong position of the merged entity in the market for the production and supply of private label TP and HHT in Sweden, the high concentration level of the market, as well as the substantiated customer concerns, it is concluded that the

¹²⁵ See (i) replies to question 84 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Consumer Tissue Customers – Sweden (Q. 8), dated 16 May 2012, (ii) replies to question 24 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Consumer Tissue Competitors – Sweden (Q. 18), dated 16 May 2012, (iii) non-confidential minutes of call with Sofidel, 14 June 2012 and (iv) non-confidential minutes of call with Wepa, 12 June 2012.

¹²⁶ See (i) replies to questions 15-16 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Consumer Tissue Customers – Sweden (Q. 8), dated 16 May 2012, (ii) non-confidential minutes of call with Sofidel, 14 June 2012, (iii) non-confidential minutes of call with Wepa, 12 June 2012 and (iv) non-confidential minutes of call with Ahold/ICA, 6 June 2012.

¹²⁷ Form CO, pages 613-614.

transaction raises serious doubts as to its compatibility with the internal market in relation to the production and supply of private label TP and HHT in Sweden.

IV.3.3.10 The United Kingdom/Ireland

- (248) In the UK/Ireland, the Parties' activities overlap in the supply of branded TP, HHT and Ha/Fa. They also overlap in the supply of private label TP, HHT and Ha/Fa.
- (249) For the branded Ha/Fa, the Parties would have a combined market share of [5-10]% with a marginal market share increment ([0-5]% by GPE). For private label Ha/Fa, the Parties would have a combined market share of [20-30] % with an increment of [5-10] % (by GPE).
- (250) On the basis of the small overlap and the lack of any concern expressed during the market investigation with regards to these markets, the Commission has concluded that the transaction does not raise serious doubts in the markets for branded Ha/Fa and private label Ha/Fa in the UK/Ireland.
- (251) However, the transaction raises concerns in the supply of both branded and private label TP and HHT. These markets are assessed in turn below.

IV.3.3.10.1 Production and supply of branded TP and HHT

- (252) The Parties' activities in relation to the production and supply of branded products overlap in relation to TP and HHT. The Table below shows the Parties' and their main competitors' market shares based on value in 2010. In the market for TP, the transaction would result in a further consolidation of the market, leaving only Kimberly-Clark as the other main supplier. In the market for HHT, the Parties' combined market shares would be high ([70-80]%) with Sofidel a distant second ([10-20]%). In HHT the transaction would bring together the number 1 and 2 market players with a very sizeable market share increment, with the number 3 player accounting for a comparatively low market share.

Table 8: Market shares in branded CT products (UK/Ireland)

| UK/IRELAND 2010 VALUE | SUPPLIER | SUPPLY OF BRANDED CT PRODUCTS (%) |
|--------------------------------------|-----------------|--|
| TP | SCA | [30-40] |
| | GPE | [5-10] |
| | Combined | [30-40] |
| | Kimberly-Clark | [50-60] |
| | Sofidel | [0-5] |
| | Others | [0-5] |
| HHT | SCA | [40-50] |
| | GPE | [20-30] |
| | Combined | [70-80] |
| | Sofidel | [10-20] |
| | Others | [5-10] |

Source: Form CO

- (253) The Parties submit that no competition concerns will arise on these markets for the following reasons: (i) retail concentration and buyer power; (ii) own retailers' brands strongly promoted and highly recognizable, (iii) no shortage of suppliers including emerging smaller branded players and (iv) post-merger it is unlikely that SCA will retain the combined SCA/GPE shares owing to the fact that retailers will source products from alternative suppliers.
- (254) However, a number of market respondents, in particular major retail chains, have expressed concerns as regards the merged entity's position in the UK/Ireland in the production and supply of branded HHT and TP.¹²⁸
- (255) The following sections assess the markets for production and supply of branded TP and HHT in the UK/Ireland.

Private label penetration is relatively low in the UK/Ireland

- (256) A determining feature of the competitive scenario in the market for TP and HHT in the UK/Ireland is the considerably lower market penetration of private labels as compared to other European markets. Moreover, the level of private label penetration in the UK/Ireland is actually decreasing. While private labels now clearly predominate in countries such as Spain and Belgium/Luxembourg (with an overall share of approximately [80-90%])¹²⁹, the branded TP and HHT in the UK/Ireland still represent a significant share of total value sales ([60-70]% for TP and [40-50]% for HHT,

¹²⁸ See replies to questions 85, 91 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Consumer Tissue Customers – UK/Ireland (Q. 9), dated 16 May 2012 and (ii) non-confidential minutes of call with Asda, 6 June 2012.

¹²⁹ Form CO, pages 214 and 246.

increasing since 2008)¹³⁰. This seem to indicate that in this market brands continue to play an important role and that the competitive constraint exerted by private labels at the downstream level (on the shelves) is less effective and therefore more limited than in other European markets. The two graphs below show that in a hypothetical overall retail market for branded goods and private labels, the share of private labels has declined (in the period 2009-1012) whereas the two main brands (SCA's *Plenty* and GPE's *Thirst Pockets*) increased their market penetration or at least remained steady.

Picture 2: Analysis of competitive constraint between private label and branded CT products in UK/Ireland

[...]

Source: Commission analysis based on Nielsen data

Closeness of competition

- (257) The market respondents stressed the closeness of competition between the Parties and the importance of the Parties' brands for the consumer. More specifically, the major retailers consider that both SCA and GPE own brands (*Plenty* for SCA and *Thirst Pockets* for GPE) that compete directly with each other in the branded sector and there is no equally strong alternative brand on the market.¹³¹
- (258) Evidence from the Nielsen retails scanner data also seem to indicate that the brands of the Parties are closer competitors to each other than to private labels.
- (259) In addition, Nielsen data for HHT shows that the presence of the fourth competitor (Kimberly-Clark) is extremely limited with a very marginal market presence. Kimberly-Clark has not grown in the last 4 years, in the period for which data is available. Moreover, the entry of Sofidel into the HHT market has remained also very modest and seems to have reached a rather 'niche segment' of jumbo rolls that are not competing directly with the classical HHT.¹³²
- (260) Regarding TP the transaction would bring together the number 2 and 3 market players. Even if Kimberly-Clark would remain the market leader with its *Andrex* brand ([50-60]%), market respondents mentioned that the transaction would further increase the market concentration. Also, Accrol, one of the remaining players is not perceived as an credible alternative supplier since they do not have their own paper-making capacity.¹³³

¹³⁰ Annex 39 of the Form CO.

¹³¹ See (i) replies to questions 52, 53, 55 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Consumer Tissue Customers – UK/Ireland (Q. 9), dated 16 May 2012, (ii) non-confidential minutes of call with Asda, 6 June 2012 and (iii) non-confidential minutes of call with Morrison, 6 June 2012.

¹³² See non-confidential minutes of call with Morrison's, 6 June 2012.

¹³³ See replies to question 39 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Consumer Tissue Competitors – UK/Ireland (Q. 19), dated 16 May 2012 and non-confidential minutes of call with Asda, 6 June 2012.

Lack of sufficient countervailing buyer power

- (261) Countervailing buyer power cannot be found to sufficiently offset potential adverse effect of a merger if it only ensures that particular segment of customers, with particular bargaining strength, is shielded from significantly higher prices or deteriorated conditions after the merger. It is furthermore not sufficient that buyer power exists prior to the merger; it must also exist and remain effective following the merger. This is because a merger between two suppliers may reduce buyer power if it thereby removes a credible alternative.¹³⁴ In the Commission's view, a significant supply alternative will be removed and the choice will be limited as the Parties would have high market shares in both TP and HHT.
- (262) The market investigation has also showed that the attempt by a major retailer to de-list Thirst Pockets failed as recently as in 2011 indicating that there might not be an offsetting buyer power to react to a price increase post-merger.¹³⁵
- (263) In the Commission's view, such "buyer power" as may exist would, therefore, not prevent the creation of a lasting dominant position as a result of the merger.

Retailers' brands strongly promoted and highly recognizable

- (264) The Parties argue that the retailers have positioned their brands to compete directly with the leading manufacturer brands. The market investigation has however not been able to confirm these arguments.

Conclusion

- (265) Given the very strong position of the merged entity in the market for the production and supply of branded TP and HHT in the UK/Ireland, the high concentration level of the market, as well as the substantiated customer concerns, it is concluded that the transaction as originally notified raises serious doubts as to its compatibility with the internal market in relation to the production and supply of branded TP and HHT in the UK/Ireland.

IV.3.3.10.2 Production and supply of private label TP and HHT

- (266) The Parties' activities in relation to the production and supply of private label products overlap in relation to TP and HHT. The Table below shows the Parties' and their main competitors' market shares based on value in 2010. In TP the transaction would bring together the number 2 and 3 market players with a very sizeable market share increment, with the new number 3 player accounting for a comparatively lower market share. In the market for HHT, the transaction would result in a further consolidation of the market, leaving only Sofidel as the other main supplier.

¹³⁴ Commission Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 31, 5 February 2004, page 5, para. 67.

¹³⁵ See non-confidential minutes of call with Asda, 6 June 2012.

Table 9: Market shares in private label CT products (UK/Ireland)

| UK/IRELAND 2010 VALUE | SUPPLIER | SUPPLY OF PRIVATE LABEL (%) |
|--------------------------------------|-----------------|--|
| TP | SCA | [20-30] |
| | GPE | [20-30] |
| | Combined | [50-60] |
| | Sofidel | [30-40] |
| | Kimberly-Clark | [0-5] |
| | Others | [5-10] |
| HHT | SCA | [20-30] |
| | GPE | [10-20] |
| | Combined | [30-40] |
| | Sofidel | [60-70] |
| | Others | [0-5] |

Source: Form CO

- (267) The Parties submit that no competition concerns will arise on these markets for the following reasons: (i) retail concentration and buyer power; (ii) own retailers' brands strongly promoted and highly recognizable and (iii) wide range of private label suppliers.¹³⁶
- (268) However, a number of customers and competitors have expressed concerns with respect to the production and supply of private label TP and HHT in the UK/Ireland.¹³⁷ In fact, customers considered that it is hard to find suppliers that have the capacity to produce the volume that is required. The market investigation also indicated that unlike many other European countries, the capacity utilization is high in the UK/Ireland.¹³⁸
- (269) The following sections assess the markets for production and supply of private label TP and HHT in the UK/Ireland. As the situation is similar for both markets concerned they will be discussed jointly.

¹³⁶ Form CO, page 315.

¹³⁷ See (i) replies to questions 85, 91 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Consumer Tissue Customers – UK/Ireland (Q. 9), dated 16 May 2012, (ii) replies to question 73 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Consumer Tissue Competitors – UK/Ireland (Q. 19), dated 16 May 2012 and (iii) non-confidential minutes of call with Asda, 6 June 2012.

¹³⁸ See replies to question 84 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Consumer Tissue Customers – UK/Ireland (Q. 9), dated 16 May 2012 and reply to questions 24, 71 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Consumer Tissue Competitors – UK/Ireland (Q. 19), dated 16 May 2012.

Transport costs

- (270) Transport costs constitute a significant obstacle to supplying converted products over large distances due to the fact that tissue products are characterised by a high volume-to-value ratio. Consumer tissue products (especially rolled ones like TP and HHT that are more voluminous due to the air contained in the rolls) cannot efficiently be transported too far away from their place of production.
- (271) The market investigation has confirmed that transport costs are an important proportion of the total cost and all the main retailers purchases their private label TP and HHT within a radius of 500 km.¹³⁹ The UK/Ireland is particularly different from the other markets in mainland Europe due to its status as an island group. As can be seen from the graphs below, the vast majority of SCA's own transports are within a radius of less than approximately [...] km from the plant where they were produced.¹⁴⁰ Furthermore, the market investigation confirmed that this also applies for SCA's main competitors active in the UK/Ireland.¹⁴¹

Picture 3: Analysis of transport cost of private label CT products in UK/Ireland

[...]

Source: Commission analysis based on 2011 raw data (provided by SCA) on the distribution of SCA sales from various plants in Europe.

- (272) The market investigation and the transport data from SCA indicate that, in order to sell in the UK/Ireland at competitive prices, a manufacturer needs to have a plant in the country.¹⁴²

Lack of sufficient countervailing buyer power

- (273) Countervailing buyer power cannot be found to sufficiently offset potential adverse effect of a merger if it only ensures that particular segment of customers, with particular bargaining strength, is shielded from significantly higher prices or deteriorated conditions after the merger. It is furthermore not sufficient that buyer power exists prior to the merger; it must also exist and remain effective following the merger. This is because a merger between two suppliers may reduce buyer power if it thereby removes a credible

¹³⁹ See (i) replies to question 33 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Consumer Tissue Customers – UK/Ireland (Q. 9), dated 16 May 2012, (ii) non-confidential minutes of call with Asda, 6 June 2012 and (iii) non-confidential minutes of call with Sainsbury, 10 June 2012.

¹⁴⁰ RBB Economic paper on "Realised transport distance – Away from Home and Consumer Tissue products supplied by SCA" (submitted on 19 March 2012), shows that the aggregate transport distance (across SCA mills), at 80th percentile in volume, is [...] km for HHT-retailer brand and [...] km for TP-retailer brand.

¹⁴¹ See replies to question 55 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Consumer Tissue Competitors – UK/Ireland (Q. 19), dated 16 May 2012.

¹⁴² See non-confidential minutes of call with Sainsbury, 10 June 2012.

alternative.¹⁴³ In the Commission's view, a significant supply alternative will be removed and the choice will be limited as the Parties would have high market shares in both TP and HHT.

- (274) Furthermore, it is easy to price discriminate between different customers as tissue products are delivered according to customers' specifications and thus are customized products. Hence, even if the largest customers would be able to exercise some countervailing buyer power this would not protect smaller customers and the Parties would still be able to raise prices above the pre-merger level.
- (275) In the Commission's view, such "buyer power" as may exist would, therefore, not prevent the creation of a lasting dominant position as a result of the merger.

Market entry and capacity

- (276) The Parties argue that the existing overcapacity in Europe means that there is no shortage of suppliers able to supply retailers with sufficient quantities of product. The market investigation has however indicated that unlike many other European countries, the capacity utilization is high in the UK/Ireland.¹⁴⁴
- (277) As confirmed by the market investigation, the geographic situation of the UK/Ireland is a barrier to competitive imports from continental Europe and therefore it is unlikely that another supplier could enter the market post-transaction.¹⁴⁵ The respondents to the market investigation also pointed to the significant costs and time that are involved in establishing new production capacity.¹⁴⁶
- (278) SCA estimates that it will cost around EUR [...] million to EUR [...] million to buy a new converting machine for products on a roll (i.e. TP and HHT). The time scale for delivery of new equipment is close to one year. Following the delivery of the equipment, a further period will be required for installation/start-up.¹⁴⁷
- (279) For these reasons, the Commission concludes that entry with new capacity in the UK/Ireland is unlikely and that in any event it would take a couple of years before a new competitor entering with new capacity could exert an effective competitive constraint on the Parties.

¹⁴³ Commission Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 31, 5 February 2004, page 5, para. 67.

¹⁴⁴ See replies to question 84 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Consumer Tissue Customers – UK/Ireland (Q. 9), dated 16 May 2012 and replies to questions 24, 71 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Consumer Tissue Competitors – UK/Ireland (Q. 19), dated 16 May 2012.

¹⁴⁵ See non-confidential minutes of call with Sainsbury, 10 June 2012.

¹⁴⁶ See reply to question 79 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Consumer Tissue Customers – UK/Ireland (Q. 9), dated 16 May 2012.

¹⁴⁷ Form CO, pages 613-614.

Retailers' brands strongly promoted and highly recognizable

- (280) The Parties argue that the retailers have positioned their brands to compete directly with the leading manufacturer brands. The market investigation has however not been able to confirm these arguments from the Parties.

Conclusion

- (281) Given the very strong position of the merged entity in the market for the production and supply of private label TP and HHT in the UK/Ireland, the high concentration level of the market, as well as the substantiated customer concerns, it is concluded that the transaction raises as initially notified serious doubts as to its compatibility with the internal market in relation to the production and supply of private label TP and HHT in the UK/Ireland.

V. PROPOSED COMMITMENTS

- (282) In order to render the concentration compatible with the internal market, the Parties submitted commitments on 15 June 2012. These commitments were market tested. Following certain modifications, a final set of commitments was submitted on 29 June 2012. The commitments are annexed to this decision and form an integral part thereof.

V.1. Commitments – the Netherlands

- (283) The commitments consist of (i) [...], (ii) a [...] year exclusive licence ([...] years extendable by a further [...] years at the option of the purchaser) for the *Lotus* and *Lotus Moltonel* (TP, HHT and Ha/Fa) in the Netherlands and in Belgium/Luxembourg and (iii) a [...] year licence ([...] years extendable by a further [...] years at the option of the purchaser) to use the *Aquatube* trademark. In order to protect and preserve the economic viability of the re-branding commitments in the Netherlands, following the market test, the Commission considered it was necessary to extend the scope of the remedies to Belgium and Luxembourg.
- (284) After the end of the exclusive licence period, SCA would not be entitled to use the *Lotus* and *Lotus Moltonel* brand for consumer tissue products in the Netherlands and in Belgium/Luxembourg for [...] years.
- (285) The divestiture also includes all customer contracts relating exclusively or predominantly to the *Lotus* TP and HHT manufacturer brands in the Netherlands and in Belgium/Luxembourg, to the extent they are assignable.
- (286) In addition, SCA is willing for a transitional period, to (i) supply the purchaser parent reel requirements (conventional or TAD) for a period of [...] years ([...] years extendable by a further [...] years at the option of the purchaser), (ii) supply the purchaser with airlaid as semi-finished or finished multi-cloth converted product requirements for [...] years ([...] years extendable by a further [...] years at the option of the purchaser), (iii) supply the purchaser with finished *Lotus* and *Lotus Moltonel* HHT, TP and Ha/Fa products for the Netherlands and Belgium/Luxembourg for up to [...] year, (iv) supply the purchaser the base material for *Aquatube* core in the Netherlands and Belgium/Luxembourg for a period of [...] years ([...] years extendable

by a further [...] years at the option of the purchaser) and (ii) arrange other transitional supply/service arrangements for up to [...] months.

- (287) The remedy package is offered, at the option of SCA either (i) in combination with the divestment of GPE's manufacturer brand business in the UK/Ireland [...] or (ii) as a standalone business [...].

Assessment of the commitments for the Netherlands

- (288) The commitments consist of a license and rebranding of GPE's *Lotus* and *Lotus Moltonel* brand which would cover TP, HHT and Ha/Fa. It also includes the divestment of converting line/s to be installed at a location specified by the purchaser.
- (289) It is to be noted that the Commission has accepted commitments to grant an exclusive, time-limited licence for a brand with the purpose of allowing the licensee to re-brand the product in the period foreseen in a limited number of exceptional cases.¹⁴⁸ A re-branding remedy carries substantially higher risks for restoring effective competition than a divestiture, including the divestiture of a brand as there is considerable uncertainty whether the licensee will succeed in establishing itself as an active competitor in the market on the basis of the re-branded product. A re-branding remedy may be acceptable in circumstances where the brand at stake is widely used and a high proportion of its turnover is generated in markets outside those in which competition concerns have been identified.¹⁴⁹ The identity of the potential licensee will be a key factor for the success of the commitments.¹⁵⁰
- (290) In the present case, the brand at stake is used across a number of Member States and a high proportion of its turnover (more than [90-100]%) is generated in markets outside the Dutch market in which competition concerns have been identified.
- (291) The commitments proposed cover not only the overlap in branded HHT where serious doubts have been identified by the Commission, but also TP and Ha/Fa. They include a royalty free licence, which could be extended at the option of the purchaser from [...] to [...] years, and cover all CT categories. They therefore go beyond what would be strictly necessary to alleviate the identified serious concerns while giving the purchaser the ability to compete with the full portfolio of branded products and with a brand that is well-known. Moreover, there would be a [...] year blackout period after the end of the licence period before SCA could re-enter the Netherlands with the *Lotus* and *Lotus Moltonel* consumer tissue brand.
- (292) The Parties have drawn the attention of the Commission to the fact that such rebranding exercises are relatively common in the market and would not undermine the ability of a potential purchaser to compete effectively with the merged entity. As the sales of the *Lotus* and *Lotus Moltonel* HHT brand in the Netherlands (approximately EUR [...] million) represent less than [0-5]% of the brand's total European sales (EUR [...])

¹⁴⁸ Commission Notice on remedies acceptable under the Council Regulation No 139/2004 and under Commission Regulation No 802/2004, OJ C 267, 22 October 2008, page 1, para. 39.

¹⁴⁹ Ibid., para. 40.

¹⁵⁰ Ibid., para. 42.

million), the Parties have indicated that a divestment of the brand across Europe would be disproportionate given the limited nature of the Commission's concerns.

- (293) The wide majority of respondents to the market test were positive with respect to the suitability of the commitments to remove the competition concerns with regards to the supply of branded HHT in the Netherlands but subject to certain conditions.¹⁵¹
- (294) These conditions stem from the relatively limited size of the Dutch market and the turnover of the brands to be licensed in that Member State which could limit the incentives of potential purchasers to undertake the re-branding exercise. In this regard, respondents stressed that for a re-branding exercise in the Netherlands to be viable, the commitments should be extended to cover the entire territory of the Benelux region, in other words, the commitments should be extended to include Belgium and Luxembourg. In support of this extension of the geographic scope of the commitments, a number of respondents remarked that their sales organisations typically cover the entire Benelux region which would assist the potential licensee in undertaking the re-branding exercise.
- (295) The respondents were of the view that the proposed remedy, as extended to include Belgium and Luxembourg, would attract suitable purchasers and enable a suitable purchaser to effectively compete for the supply branded products in the Netherlands on a lasting basis. Moreover, they also deemed the commitments to be sufficiently clear. A number of respondents also indicated that they would be interested in this commitment.
- (296) As noted in the Commission Notice on remedies, where a remedy takes the form of re-branding commitments, the identity of the potential licensee will be a key factor for the success of the commitments.¹⁵² In this respect, the Commission considers that a suitable purchaser should therefore be already active in the tissue sector and have prior experience of re-branding or demonstrate sufficiently to the Commission that it would be able to undertake such an exercise successfully.

Conclusion on the commitments for the Netherlands

- (297) On the basis of the above, the Commission concludes that the proposed commitments are sufficient to remove the serious doubts identified on the market for branded HHT in the Netherlands

V.2. Commitments - Sweden

- (298) The commitments consist of the divestiture of the [...] mill [...]. In addition SCA will use all reasonable efforts to transfer the benefit of GPE's private label business for HHT and TP in Sweden as well as the benefit of existing SCA private label supply contracts
- (299) The [...] mill to be divested includes: (i) the land and the buildings; (ii) one conventional paper machine with a capacity of [...] tonnes; (iii) one deinking facility; (iv) two Perini

¹⁵¹ Third Parties' non-confidential replies to the Commission's questionnaire on remedies.

¹⁵² Commission Notice on remedies acceptable under the Council Regulation No 139/2004 and under Commission Regulation No 802/2004, OJ C 267, 22.10.2008, page 1, para. 42.

converting lines: one [...] line with a capacity of [...] tonnes and one [...] line with a capacity of [...] tonnes and (v) an additional TP converting line with a capacity of [...] tonnes to be moved from [...] mill in [...] to [...].

- (300) The divestiture also includes (i) all licences, permits and authorisations associated with the [...] facility to the extent they are assignable, (ii) all customer contracts relating exclusively or predominantly to GPE's TP and HHT retailer brand supply in Sweden and (iii) all customer contracts relating exclusively or predominantly to the supply of retailer brand products from [...].
- (301) In addition, SCA is willing for a transitional period, to supply the purchaser finished products from [...] mill in [...] for a period of [...] and to arrange other transitional supply/service arrangements for up to [...].

Assessment of the commitments

- (302) The commitments would remove the entire overlap arising from the proposed transaction in the production and supply of private label TP and HHT in Sweden.
- (303) However, a majority of the respondents to the market test of the commitments questioned the capacity of the [...] mill and whether it would be enough to enable the purchaser to acquire a viable business.¹⁵³
- (304) The Parties had initially foreseen the possibility to divest the [...] mill with no additional capacity to be transferred. However, in order to ensure the viability of the commitments, SCA modified the commitments to also include an additional TP converting line to be transferred from [...] mill to [...].
- (305) The inclusion of the TP line was required as this will widen the scope of the potential purchasers to those which may not yet be active to a significant extent in the supply of private label TP and HHT in the Nordic region. The divestment business at [...] will now have all the equipment necessary to meet the product requirements of Sweden's largest retail group which currently sources its private label tissue requirements from [...] mill.

Conclusion on the commitment for Sweden

- (306) In light of the above, it is considered that the commitments, as modified, would remove the serious doubts in the markets for production and supply of private label TP and HHT in Sweden.

V.3. Commitments - the United Kingdom/Ireland

V.3.1 Branded TP and HHT

- (307) The commitments consist of the divestiture of the GPE manufacturer branded business in the UK/Ireland. This would consist of a conversion facility [...] or a supply arrangement for parent reels.

¹⁵³ Third Parties' non-confidential replies to the Commission's questionnaire on remedies.

- (308) The manufacturer branded business would comprise the following brands: *Thirst Pockets* (HHT), *Nouvelle* (TP and HHT), *Inversoft* (TP and HHT), *Dixcel* (TP) and *Kittensoft* (TP) and thereby remove almost the entire overlap resulting from the transaction.¹⁵⁴ The brands to be divested are currently sold only in the UK/Ireland.
- (309) This manufacturer branded divestment business could be purchased on its own by a potential purchaser or in combination with the UK/Ireland private label divestment business (described below).
- (310) The [...] converting facility to be divested includes: (i) SCA's sub-lease on the land and buildings; (ii) the fixtures and fittings and IT equipment; (iii) six converting lines (2 for each of TP/HHT and Ha/Fa) with a total capacity of [...] tonnes; (iv) [...].
- (311) The divestiture also includes (i) all SCA owned rights relating to the *Thirst Pockets*, *Inversoft*, *Kittensoft*, *Nouvelle* and *Dixcel* brands in the UK/Ireland, (ii) all licences, permits and authorisations associated with the [...] facility and, [...](iii) all customer contracts relating exclusively or predominantly to the TP and HHT manufacturer brands in the UK/Ireland to the extent they are assignable.
- (312) In addition, SCA is willing for a transitional period, to (i) supply the purchaser parent reel requirements (conventional and TAD) under a [...] year agreement, (ii) supply the purchaser airlaid as semi-finished or finished multi-cloth converted product requirements under a [...] year agreement and (ii) arrange other transitional supply/service arrangements for up to [...].

Assessment of the commitments

- (313) The commitments cover almost the entire overlaps in the field of the production and supply of branded TP and HHT in UK/Ireland between the Parties.
- (314) The wide majority of the respondents to the market test were positive with respect to the suitability of the commitments to remove the competition concerns with regard to the production and supply of branded TP and HHT.¹⁵⁵
- (315) The respondents were of the view that the proposed remedy will attract suitable purchasers, is viable and a suitable purchaser can indeed effectively compete for the supply of branded TP and HHT on a lasting basis. Moreover they also deemed the commitment to be sufficiently clear. A number of respondents also indicated that they would be interested in buying the divestment business.

Conclusion on the commitments for branded TP and HHT in the UK/Ireland

- (316) In light of the above, it is considered that the commitments would remove the serious doubts in the markets for production and supply of branded TP and HHT.

¹⁵⁴ The *Lotus Disney* brand would be retained but the sales of this product in the UK/Ireland are marginal. Contrary to the other brands to be divested in the UK/Ireland, the *Lotus* brand is used by GPE in other Member States for CT products.

¹⁵⁵ Third Parties' non-confidential replies to the Commission's questionnaire on remedies.

V.3.2 Private label TP and HHT

- (317) The commitments consist of (i) the divestiture of [...] mill; (ii) a HHT converting line currently at the [...] site to be relocated to [...]; (iii) at the option of the purchaser, a TP converting line at the [...] to be relocated to [...] and (iv) that SCA will use all reasonable efforts to transfer the benefit of GPE's private label business for HHT and TP in the UK/Ireland.
- (318) The [...] mill to be divested includes: (i) the land and buildings; (i) a paper machine with a capacity of [...]tonnes; (iii) four TP converting lines with capacity of [...] tonnes; (iv) an HHT converting line currently at the [...] site to be relocated to [...] at the cost of SCA and (v) at the option of the purchaser, a TP converting line at the [...] to be relocated to [...] at the cost of SCA.
- (319) All licences, permits and authorisations associated with the [...] facility to the extent they are assignable.
- (320) All customer contracts relating exclusively or predominantly to GPE's TP and HHT retailer brand supply in the UK and Ireland. SCA will make all reasonable efforts to transfer the benefits of the existing GPE TP and HHT retailer brand contracts in the UK and Ireland to the Purchaser to the extent they are assignable.
- (321) In addition, SCA is willing for a transitional period, to supply the purchaser additional parent reel requirements (conventional) under a [...] year agreement and to arrange other transitional supply/service arrangements for up to [...].

Assessment of the commitments

- (322) The commitments cover all overlaps in the field of production and supply of private label TP and HHT in the UK/Ireland between the Parties.
- (323) The wide majority of the respondents to the market test were positive with respect to the suitability of the commitments to remove the competition concerns with regard to the production and supply of private label TP and HHT.¹⁵⁶
- (324) The respondents were of the view that the proposed remedy will attract suitable purchasers, is viable and a suitable purchaser can indeed effectively compete for the supply of private label TP and HHT on a lasting basis. Moreover they also deemed the commitments to be sufficiently clear. A number of respondents also indicated that they would be interested in buying the divestment business.

Conclusion on the commitments for private label TP and HHT in the UK/Ireland

- (325) On the basis of the above, it is considered that the commitments would remove the serious doubts in the markets for production and supply of private label TP and HHT in the UK/Ireland.

¹⁵⁶ Third Parties' non-confidential replies to the Commission's questionnaire on remedies.

VI. CONCLUSION

- (326) For the above reasons, the Commission has decided not to oppose the notified operation as modified by the commitments and to declare it compatible with the internal market and with the functioning of the EEA Agreement, subject to full compliance with the conditions in sections B and C of the commitments annexed to the present decision and with the obligations contained in the other sections of the said commitments. This decision is adopted in application of Article 6(1)(b) in conjunction with Article 6(2) of the Merger Regulation.

For the Commission

(signed)
Joaquín ALMUNIA
Vice-President

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No. 139/2004 as amended (the **Merger Regulation**), Svenska Cellulosa Aktiebolaget SCA (**SCA**) hereby provides the following Commitments (the **Commitments**) in order to enable the European Commission (the **Commission**) to declare SCA's acquisition of the European tissue business of Georgia Pacific (**GPE** and together with SCA, the **Parties**) (the **Notified Concentration**) compatible with the common market and the EEA Agreement by its decision pursuant to Article 6(1)(b) of the Merger Regulation (the **Decision**).

The Commitments shall take effect upon the date of adoption of the Decision.

This text shall be interpreted in the light of the Decision to the extent that the Commitments are attached as conditions and obligations, in the general framework of Community law, in particular in the light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004.

Section A. Definitions

For the purpose of the Commitments, the following terms shall have the following meaning:

Affiliated Undertakings: undertakings controlled by the Parties and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 Merger Regulation and in the light of the Commission Notice on the concept of concentration under Council Regulation (EC) No 139/2004.

Closing: the transfer of the legal title of the Divestment Business to the Purchaser.

Divestment Business: the business or businesses as defined in Section B and the Schedule that the Parties commit to divest.

Divestiture Trustee: one or more natural or legal person(s), independent from the Parties, who is approved by the Commission and appointed by SCA and who has received from SCA the exclusive Trustee Mandate to sell the Divestment Business to a Purchaser at no minimum price.

Effective Date: the date of adoption of the Decision.

First Divestiture Period: the period of [...] from the Effective Date.

Hold Separate Manager: the person appointed by SCA for the Divestment Business to manage the day-to-day business under the supervision of the Monitoring Trustee.

Key Personnel: all personnel necessary to maintain the viability and competitiveness of the Divestment Business, as listed in the Schedule.

Monitoring Trustee: one or more natural or legal person(s), independent from the

Parties, who is approved by the Commission and appointed by SCA, and who has the duty to monitor SCA's compliance with the conditions and obligations attached to the Decision.

Personnel: all personnel currently employed by the Divestment Business, including Key Personnel, staff seconded to the Divestment Business, shared personnel and the additional personnel listed in the Schedule.

Purchaser: the entity approved by the Commission as acquirer of the Divestment Business in accordance with the criteria set out in Section D.

Trustee(s): the Monitoring Trustee and the Divestiture Trustee.

Trustee Divestiture Period: the period of [...] from the end of the First Divestiture Period.

Section B. The Divestment Business

Commitment to divest

1. In order to restore effective competition, SCA commits to divest, or procure the divestiture of the Divestment Business by the end of the Trustee Divestiture Period as a going concern to a Purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 15. To carry out the divestiture, SCA commits to find a Purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment Business within the First Divestiture Period. If SCA has not entered into such an agreement at the end of the First Divestiture Period, SCA shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 24 in the Trustee Divestiture Period.
2. SCA shall be deemed to have complied with this commitment if, by the end of the Trustee Divestiture Period, SCA has entered into a final binding sale and purchase agreement, if the Commission approves the Purchaser and the terms in accordance with the procedure described in paragraph 15 and if the closing of the sale of the Divestment Business takes place within a period not exceeding 3 months after the approval of the Purchaser and the terms of sale by the Commission.
3. In order to maintain the structural effect of the Commitments, the Parties shall, for a period of 10 years after the Effective Date, not acquire direct or indirect influence over the whole or part of the Divestment Business, unless the Commission has previously found that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the proposed concentration compatible with the common market.

Structure and definition of the Divestment Business

4. The Divestment Business consists of:

Manufacturer Brand Divestment Remedy

At the option of SCA:

(i) The sale of the UK and the Benelux manufacturer branded businesses as separate businesses (as described in 4(a) and 4(b) below):

- (a) The Manufacturer Brand Divestment Business (UK MB Divestment Business) - GPE's UK and Ireland Manufacturer Brand Business operated under the Thirst Pockets, Nouvelle, Kittensoft, Dixcel and Inversoft brands, as described in further detail in Schedule 1.
- (b) The Benelux only Manufacturer Brand Divestment Business (Standalone Benelux MB Divestment Business) - GPE's household towel (HHT), toilet paper (TP) and hanky/facials (HaFa) Manufacturer Brand Businesses in the Netherlands and Belux operated under the Lotus and Lotus Moltonel brands, as described in further detail in Schedule 2.

Or

(ii) The sale of the UK and Benelux manufacturer branded businesses as a single business (as described in 4(c) below):

- (c) The Extended Benelux Manufacturer Brand Divestment Business (Extended Benelux MB Divestment Business) – a combination of the businesses described at 4(a) and 4(b), as described in further detail in Schedule 3.

Retailer Brand Divestment Remedies

- (d) The Retailer Brand Divestment Business (**RB Divestment Business**) – GPE's UK Retailer Brand Business, as described in further detail in Schedule 4.
- (e) The Sweden Retailer Brand Divestment Business (**SW Divestment Business**) – the SCA retailer brand business produced in the [...] mill and GPE's retailer brand business in Sweden, as described in further detail in Schedule 5.

5. The present legal and functional structure of the Divestment Business as operated to date is described in the Schedule. The Divestment Business, described in more detail in the Schedule, includes

- (a) all tangible and intangible assets (including intellectual property rights), which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business;
- (b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;

- (c) all contracts, leases, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business (items referred to under (a)-(c) hereinafter collectively referred to as **Assets**);
- (d) the Personnel; and
- (e) at the request of the Purchaser(s), the benefit, for a transitional period after Closing (as detailed in the Schedule) and on terms and conditions equivalent to those at present afforded to the Divestment Business, of all current arrangements under which SCA, GPE or Affiliated Undertakings supply products or services to the Divestment Business, as detailed in the Schedule, unless otherwise agreed with the Purchaser.

Section C. Related commitments

Preservation of Viability, Marketability and Competitiveness

6. From the Effective Date until Closing, SCA shall preserve the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business. In particular SCA undertakes:
 - (a) not to carry out any act upon its own authority that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;
 - (b) to make available sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans;
 - (c) to take all reasonable steps, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Business.

Hold-separate obligations of Parties

7. SCA commits, from the Effective Date until Closing, to keep the Divestment Business separate from the businesses it is retaining and to ensure that Key Personnel of the Divestment Business – including the Hold Separate Manager – have no involvement in any business retained and vice versa. SCA shall also ensure that the Personnel does not report to any individual outside the Divestment Business.
8. Until Closing, SCA shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the businesses retained by the Parties. SCA shall appoint a Hold Separate Manager who shall be responsible for the management of the Divestment Business, under the supervision of the Monitoring Trustee. The Hold Separate Manager shall manage the Divestment Business

independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by the Parties.

Ring-fencing

9. SCA shall implement all necessary measures to ensure that it does not after the Effective Date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business. In particular, the participation of the Divestment Business in a central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Business. SCA may obtain information relating to the Divestment Business which is reasonably necessary for the divestiture of the Divestment Business or whose disclosure to SCA is required by law.

Non-solicitation clause

10. The Parties undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Business for a period of [...] after Closing.

Due Diligence

11. In order to enable potential Purchasers to carry out a reasonable due diligence of the Divestment Business, SCA shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:
 - (a) provide to potential Purchasers sufficient information as regards the Divestment Business;
 - (b) provide to potential Purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting

12. SCA shall submit written reports in English on potential Purchasers of the Divestment Business and developments in the negotiations with such potential Purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request).
13. The Parties shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of an information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential Purchasers.

Section D. The Purchaser

14. In order to ensure the immediate restoration of effective competition, the Purchaser, in order to be approved by the Commission, must:
- (a) be independent of and unconnected to the Parties;
 - (b) have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors;
 - (c) in relation to the Extended Benelux MB Divestment Business and the Standalone Benelux MB Divestment Business, be an existing producer of consumer or AFH tissue products either with experience of undertaking a rebranding exercise or capable of undertaking a rebranding exercise relating to consumer or AFH tissue;
 - (d) neither be likely to create, in the light of the information available to the Commission, prima facie competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business (the before-mentioned criteria for the Purchaser hereafter **the Purchaser Requirements**).
15. The final binding sale and purchase agreement shall be conditional on the Commission's approval. When SCA has reached an agreement with a Purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), to the Commission and the Monitoring Trustee. SCA must be able to demonstrate to the Commission that the Purchaser meets the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments. For the approval, the Commission shall verify that the Purchaser fulfills the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments. The Commission may approve the sale of the Divestment Business without one or more Assets or parts of the Personnel, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed Purchaser.

Section E. Trustee

I. Appointment procedure

16. SCA shall appoint a Monitoring Trustee to carry out the functions specified in the Commitments for a Monitoring Trustee. If SCA has not entered into a binding sales and purchase agreement one month before the end of the First Divestiture Period or if the Commission has rejected a Purchaser proposed by SCA at that time or thereafter, SCA shall appoint a Divestiture Trustee to carry out the functions specified in the Commitments for a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Extended Divestment Period.
17. The Trustee shall be independent of the Parties, possess the necessary qualifications to

carry out its mandate, for example as an investment bank or consultant or auditor, and shall neither have nor become exposed to a conflict of interest. The Trustee shall be remunerated by the Parties in a way that does not impede the independent and effective fulfillment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Business, the fee shall also be linked to a divestiture within the Trustee Divestiture Period.

Proposal by the Parties

18. No later than one week after the Effective Date, SCA shall submit a list of one or more persons whom SCA proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period, SCA shall submit a list of one or more persons whom SCA proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the proposed Trustee fulfills the requirements set out in paragraph 17 and shall include:
 - (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfill its duties under these Commitments;
 - (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;
 - (c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

19. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfill its obligations. If only one name is approved, SCA shall appoint or cause to be appointed, the individual or institution concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, SCA shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by the Parties

20. If all the proposed Trustees are rejected, SCA shall submit the names of at least two more individuals or institutions within one week of being informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 16 and 19.

Trustee nominated by the Commission

21. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom SCA shall appoint, or cause to be appointed, in accordance

with a trustee mandate approved by the Commission.

II. Functions of the Trustee

22. The Trustee shall assume its specified duties in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or SCA, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

23. The Monitoring Trustee shall:

- (i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.
- (ii) oversee the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by SCA with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:
 - (a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the business retained by the Parties, in accordance with paragraphs 6 and 7 of the Commitments;
 - (b) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 8 of the Commitments;
 - (c) (i) in consultation with SCA, determine all necessary measures to ensure that SCA does not after the effective date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business, in particular strive for the severing of the Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business, and
 - (ii) decide whether such information may be disclosed to SCA as the disclosure is reasonably necessary to allow SCA to carry out the divestiture or as the disclosure is required by law;
 - (d) monitor the splitting of assets and the allocation of Personnel between the Divestment Business and SCA or Affiliated Undertakings;

- (iii) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision;
- (iv) propose to SCA such measures as the Monitoring Trustee considers necessary to ensure SCA's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;
- (v) review and assess potential Purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process,
 - (a) potential Purchasers receive sufficient information relating to the Divestment Business and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and
 - (b) potential Purchasers are granted reasonable access to the Personnel;
- (vi) provide to the Commission, sending SCA a non-confidential copy at the same time, a written report within 15 days after the end of every month. The report shall cover the operation and management of the Divestment Business so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential Purchasers. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission, sending SCA a non-confidential copy at the same time, if it concludes on reasonable grounds that SCA is failing to comply with these Commitments;
- (vii) within one week after receipt of the documented proposal referred to in paragraph 15, submit to the Commission a reasoned opinion as to the suitability and independence of the proposed Purchaser and the viability of the Divestment Business after the Sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed Purchaser.

Duties and obligations of the Divestiture Trustee

24. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Business to a Purchaser, provided that the Commission has approved both the Purchaser and the final binding sale and purchase agreement in accordance with the procedure laid down in paragraph 15. The Divestiture Trustee shall include in the sale and purchase agreement such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary

representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of SCA, subject to SCA's unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.

25. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to SCA.

III. Duties and obligations of the Parties

26. SCA shall provide and shall cause its advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of SCA or the Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and SCA and the Divestment Business shall provide the Trustee upon request with copies of any document. SCA and the Divestment Business shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.
27. SCA shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business which are currently carried out at headquarters level. SCA shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential Purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential Purchasers in the due diligence procedure. SCA shall inform the Monitoring Trustee on possible Purchasers, submit a list of potential Purchasers, and keep the Monitoring Trustee informed of all developments in the divestiture process.
28. SCA shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale, the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, SCA shall cause the documents required for effecting the sale and the Closing to be duly executed.
29. SCA shall indemnify the Trustee and its employees and agents (each an Indemnified Party) and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to SCA for any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the willful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.
30. At the expense of SCA, the Trustee may appoint advisors (in particular for corporate finance

or legal advice), subject to SCA's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should SCA refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard SCA. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 29 shall apply mutatis mutandis. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served SCA during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

IV. Replacement, discharge and reappointment of the Trustee

31. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a conflict of interest:
 - (a) the Commission may, after hearing the Trustee, require SCA to replace the Trustee;
or
 - (b) SCA, with the prior approval of the Commission, may replace the Trustee.
32. If the Trustee is removed according to paragraph 31, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 16-21.
33. Beside the removal according to paragraph 31, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F. The Review Clause

34. The Commission may, where appropriate, in response to a request from SCA showing good cause and accompanied by a report from the Monitoring Trustee:
 - (a) Grant an extension of the time periods foreseen in the Commitments, or
 - (b) Waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments.

Where SCA seeks an extension of a time period, it shall submit a request to the Commission no later than one month before the expiry of that period, showing good cause. Only in exceptional circumstances shall SCA be entitled to request an extension within the last month of any period.

Duly authorized for and on behalf of Svenska Cellulosa Aktiebolaget SCA AB

Name: [...]

Position: [...]

Name: [...]

Position: [...]

29 June 2012

SCHEDULE 1

The UK MB Divestment Business

1. The UK MB Divestment Business as operated to date has the following legal and functional structure:

The UK MB Divestment Business is operated within Georgia-Pacific GB Ltd for the UK and Georgia-Pacific Ireland Ltd for Ireland. However, at closing of the Transaction, the business will transfer under an asset deal to SCA Hygiene Products Tissue Ltd for the UK and SCA Hygiene Products Dublin Ltd for Ireland as part of the transfer of the total GPE business in the UK/Ireland to SCA. These new companies have recently been formed.

2. Following paragraph 4 of these Commitments, the Divestment Business includes, but is not limited to:

(a) the following main tangible assets:

The [...] converting facility ([...]) which includes SCA's sub-lease on the land and buildings, the fixtures and fittings and IT equipment, six converting lines:

- 2 TP lines with capacity of [...] tonnes;
- 2 HHT lines with capacity of [...] tonnes;
- 2 hanky/facials lines with capacity of [...] tonnes.

[...]

[...]

(b) the following main intangible assets:

All SCA owned and/or associated rights relating to the Thirst Pockets, Inversoft, Kittensoft, Nouvelle and Dixcel brands in the UK and Ireland.

(c) the following main licences, permits and authorisations:

SCA will use its best efforts to transfer all licences, permits and authorisations associated with the [...] facility and, as the case may be, [...] to the extent they are assignable.

(d) the following main contracts, agreements, leases, commitments and understandings:

SCA will use its best efforts to transfer all customer contracts relating exclusively or predominantly to the TP and HHT manufacturer brands in the UK and Ireland listed at section 2(b) above to the extent they are assignable.

SCA will use its best efforts to transfer all other contracts, agreements, leases, commitments and understandings relating to the operations of the [...] facility to the extent that they relate to the manufacture and sale of the TP and HHT manufacturer brands in the UK and Ireland listed at section 2(b) above to the extent they are assignable.

[...], SCA will use its best efforts to transfer all other contracts, agreements, leases, commitments and understandings relating to the operations of [...] to the extent they are assignable.

[...] SCA will use its best efforts to transfer all other contracts, agreements, leases, commitments and understandings relating to the operations of [...] (excluding those relating to the converting lines (and the products produced on those converting lines) which will be removed by SCA) to the extent they are assignable.

(e) the following customer, credit and other records:

All customer accounts, orders, and credit records relating exclusively or predominantly to the manufacture and sale of the TP and HHT manufacturer brands in the UK and Ireland listed at section 2(b) above.

(f) the following Personnel:

The Parties will make best efforts to transfer the following Personnel to the Purchaser, provided always that the Parties may not legally be able to require a designated employee to transfer to a Purchaser. The transfer of Personnel will be subject to local employment regulations including those arising from the Acquired Rights Directive.

- The Hold Separate Manager;
- The allocated MB Sales and Marketing organization in [...]: around [...] persons;
- The allocated Admin organization in [...]: around [...] persons;
- The full production team of [...] converting;
- [...]
- [...].

(g) ⁽²⁷⁾ the following Key Personnel:

- The Hold Separate Manager;
- The mill manager at [...];
- [...]

A proposed organization chart for the manufacturer branded business is attached at

Appendix 1.

- (h) **the arrangements for the supply with the following products or services by SCA or Affiliated Undertakings for a transitional period after Closing:**

To the extent required by the Purchaser:

- (a) Supply of parent reel requirements (conventional and TAD) [...].
- (b) Supply of airlaid as semi-finished or finished multi-cloth converted product requirements [...].
- (c) Other transitional supply/service arrangements for up [...].

3. The Divestment Business shall not include:

- (a) Three converting lines at [...].
- (b) Lotus Disney HHT brand.
- (c) Lotus hanky/facials brand.
- (d) The Lotus trademark.
- (e) The business and resources currently in [...] which have been allocated to the RB Divestment Business as described in Schedule 4.
- (f) [...].
- (g) Accounts payable and receivable.
- (h) Any other asset not part of the UK MB Divestment Business as defined in this Schedule 1 and which is used in relation to a business of the parties other than the UK MB Divestment Business.

SCHEDULE 2

The Standalone Benelux MB Divestment Business

1. The Standalone Benelux MB Divestment Business as operated to date has the following legal and functional structure:

The Standalone Benelux MB Divestment Business is operated within Georgia-Pacific Nederland BV and Georgia-Pacific Belux SPRL. However, at closing of the Transaction, the business will transfer under an asset deal to SCA Graphic Paper Nederland BV as part of the transfer of the total GPE business in the Netherlands to SCA. In Belgium, at closing of the Transaction, the shares of Georgia-Pacific Belux SPRL will be bought by SCA.

2. Following paragraph 4 of these Commitments, the Divestment Business includes, but is not limited to:

a) the following main tangible assets:

[...]

b) the following main intangible assets:

[...] year exclusive licence ([...] years extendable by a further [...] years at the option of the Purchaser) for the Lotus and Lotus Moltonel consumer tissue brands (HHT, TP and hanky/facials) in the Netherlands and Belux, with a subsequent blackout period of [...] years from the conclusion of the licence, during which SCA is not entitled to use the Lotus or Lotus Moltonel brands for consumer tissue products in the Netherlands and Belux.

c) the following main licences, permits and authorisations:

[...] year exclusive licence ([...] years extendable by a further [...] years at the option of the Purchaser) for the Lotus and Lotus Moltonel consumer tissue brand (HHT, TP and hanky/facials) in the Netherlands and Belux, with a subsequent blackout period of [...] years from the conclusion of the licence, during which SCA is not entitled to use the Lotus or Lotus Moltonel brands for consumer tissue products in the Netherlands and Belux.

[...] year licence ([...] years extendable by a further [...] years at the option of the Purchaser) to use the Aquatube trademark in the Netherlands and Belux.

d) the following main contracts, agreements, leases, commitments and understandings:

SCA will use its best efforts to transfer all customer contracts relating exclusively or predominantly to the Lotus TP and HHT manufacturer brands in the Netherlands to the extent they are assignable.

SCA will use its best efforts to transfer all customer contracts relating

exclusively or predominantly to the Lotus TP, HHT and HaFa and Lotus Moltonel manufacturer brands in Belux to the extent they are assignable.

e) **the following customer, credit and other records:**

All customer accounts, orders, and credit records relating exclusively or predominantly to the sale of the Lotus TP and HHT manufacturer brands in the Netherlands.

All customer accounts, orders, and credit records relating exclusively or predominantly to the sale of the Lotus TP, HHT and HaFa and Lotus Moltonel manufacturer brands in Belux.

f) **the following Personnel:**

The Parties will make best efforts to transfer the following Personnel to the Purchaser, provided always that the Parties may not legally be able to require a designated employee to transfer to a Purchaser. The transfer of Personnel will be subject to local employment regulations including those arising from the Acquired Rights Directive

- The Hold Separate Manager;
- The Sales and Marketing team for the Netherlands and Belux that currently manages the Lotus and Lotus Moltonel HHT, TP and HaFa business: with around [...] persons;
- Admin staff, if required by the Purchaser, to support this business.

g) **the following Key Personnel:**

- The Hold Separate Manager;
- The current General manager for GPE in the Netherlands and Belux.

A proposed organization chart for the Standalone Benelux MB Divestment Business is attached at **Appendix 2**.

h) **the arrangements for the supply with the following products or services by SCA or Affiliated Undertakings for a transitional period after Closing:**

To the extent required by the Purchaser:

- (a) Supply of parent reel requirements (conventional and TAD) [...].
- (b) Supply of airlaid as semi-finished or finished multi-cloth converted product requirements [...].
- (c) Supply of finished Lotus and Lotus Moltonel HHT, TP and HaFa products for the Netherlands and Belux for up to [...].
- (d) Supply on a cost basis the base material for the Aquatube core recently

introduced for Lotus and Lotus Moltonel toilet paper in the Netherlands and Belux [...].

(e) Other transitional supply/service arrangements for up to [...].

3. The Divestment Business shall not include:

(a) The Lotus and Lotus Moltonel trademarks except the rights to the trademarks in the Netherlands and Belux as set out in section 2(b) above.

(b) Accounts payable and receivable.

(c) Any other asset not part of the Standalone Benelux MB Divestment Business as defined in this Schedule 2 and which is used in relation to a business of the parties other than the Standalone Benelux MB Divestment Business.

SCHEDULE 3

The Extended Benelux MB Divestment Business

1. The Extended Benelux MB Divestment Business as operated to date has the following legal and functional structure:

The Extended Benelux MB Divestment Business is operated within Georgia-Pacific GB Ltd for the UK, Georgia-Pacific Ireland Ltd for Ireland, Georgia-Pacific Nederland BV and Georgia-Pacific Belux SPRL. However, at closing of the Transaction, the business will transfer under an asset deal to SCA Hygiene Products Tissue Ltd for the UK, SCA Hygiene Products Dublin Ltd for Ireland and SCA Graphic Paper Nederland BV as part of the transfer of the total GPE business in the UK/Ireland and the Netherlands to SCA. In Belgium, at closing of the Transaction, the shares of Georgia-Pacific Belux SPRL will be bought by SCA. The SCA UK/Ireland companies have recently been formed.

2. Following paragraph 4 of these Commitments, the Divestment Business includes, but is not limited to:

a) the following main tangible assets:

The [...] converting facility ([...]) which includes SCA's sub-lease on the land and buildings, the fixtures and fittings and IT equipment, six converting lines:

- 2 TP lines with capacity of [...] tonnes;
 - 2 HHT lines with capacity of 1[...] tonnes;
 - 2 hanky/facials lines with capacity of [...] tonnes.
- [...]
[...]
[...]

b) the following main intangible assets:

All SCA owned and/or associated rights relating to the Thirst Pockets, Inversoft, Kittensoft, Nouvelle and Dixcel brands in the UK and Ireland.

[...] year exclusive licence ([...] years extendable by a further [...] years at the option of the Purchaser) for the Lotus and Lotus Moltonel consumer tissue brands (HHT, TP and hanky/facials) in the Netherlands and Belux, with a subsequent blackout period of [...] years from the conclusion of the licence, during which SCA is not entitled to use the Lotus or Lotus Moltonel brands for consumer tissue products in the Netherlands and Belux.

c) the following main licences, permits and authorisations:

SCA will use its best efforts to transfer all licences, permits and authorisations associated with the [...] facility and, [...] to the extent they are assignable.

[...] year exclusive licence ([...] years extendable by a further [...] years at the option of the Purchaser) for the Lotus and Lotus Moltonel consumer tissue brand (HHT, TP and hanky/facials) in the Netherlands and Belux, with a subsequent blackout period of [...] years from the conclusion of the licence, during which SCA is not entitled to use the Lotus or Lotus Moltonel brands for consumer tissue products in the Netherlands and Belux.

[...] year licence ([...] years extendable by a further [...] years at the option of the Purchaser) to use the Aquatube trademark in the Netherlands and Belux.

d) the following main contracts, agreements, leases, commitments and understandings:

SCA will use its best efforts to transfer all customer contracts relating exclusively or predominantly to the TP and HHT manufacturer brands in the UK and Ireland listed at section 2(b) above to the extent they are assignable.

SCA will use its best efforts to transfer all customer contracts relating exclusively or predominantly to the Lotus TP and HHT manufacturer brands in the Netherlands to the extent they are assignable.

SCA will use its best efforts to transfer all customer contracts relating exclusively or predominantly to the Lotus TP, HHT and HaFa and Lotus Moltonel manufacturer brands in Belux to the extent they are assignable.

SCA will use its best efforts to transfer all other contracts, agreements, leases, commitments and understandings relating to the operations of the [...] facility to the extent that they relate to the manufacture and sale of the TP and HHT manufacturer brands in the UK and Ireland listed at section 2(b) above to the extent they are assignable.

[...], SCA will use its best efforts to transfer all other contracts, agreements, leases, commitments and understandings relating to the operations of [...] to the extent they are assignable.

[...], SCA will use its best efforts to transfer all other contracts, agreements, leases, commitments and understandings relating to the operations of [...] to the extent they are assignable.

e) the following customer, credit and other records:

All customer accounts, orders, and credit records relating exclusively or predominantly to the manufacture and sale of the TP and HHT manufacturer brands in the UK and Ireland listed at section 2(b) above.

All customer accounts, orders, and credit records relating exclusively or

predominantly to the sale of the Lotus TP and HHT manufacturer brands in the Netherlands.

All customer accounts, orders, and credit records relating exclusively or predominantly to the sale of the Lotus TP, HHT and HaFa and Lotus Moltonel manufacturer brands in Belux.

f) the following Personnel:

The Parties will make best efforts to transfer the following Personnel to the Purchaser, provided always that the Parties may not legally be able to require a designated employee to transfer to a Purchaser. The transfer of Personnel will be subject to local employment regulations including those arising from the Acquired Rights Directive.

- The Hold Separate Manager;
- The allocated MB Sales and Marketing organization in [...]: around [...] persons;
- The allocated Admin organisation in [...]: around [...] persons;
- The full production team of [...] converting;
- [...];
- The Sales and Marketing team for the Netherlands and Belux that currently manages the Lotus and Lotus Moltonel HHT, TP and HaFa business: with around [...] persons;
- [...].

g) the following Key Personnel:

- The Hold Separate Manager;
- The mill manager at [...];
- The current General manager for GPE in the Netherlands and Belux;
- [...].

A proposed organization chart for the Extended Benelux MB Divestment Business is attached at **Appendix 3**.

h) the arrangements for the supply with the following products or services by SCA or Affiliated Undertakings for a transitional period after Closing:

To the extent required by the Purchaser:

- (a) Supply of parent reel requirements (conventional and TAD) [...].
- (b) Supply of airlaid as semi-finished or finished multi-cloth converted product requirements [...].
- (c) Supply of finished Lotus and Lotus Moltonel HHT, TP and HaFa products for the Netherlands and Belux for up to [...].

- (d) Supply on a cost basis the base material for the Aquatube core recently introduced for Lotus and Lotus Moltonel toilet paper in the Netherlands and Belux [...].
- (e) Other transitional supply/service arrangements for up to [...].

3. The Divestment Business shall not include:

- (a) Three converting lines at GPE [...] [...].
- (b) Lotus Disney HHT brand in the UK/Ireland.
- (c) Lotus hanky/facials brand in the UK/Ireland.
- (d) The Lotus and Lotus Moltonel trademarks except the rights to the trademarks in the Netherlands and Belux as set out in section 2(b) above.
- (e) The business and resources currently in [...] which have been allocated to the RB Divestment Business as described in Schedule 4.
- (f) [...].
- (g) Accounts payable and receivable.
- (h) Any other asset not part of the Extended Benelux MB Divestment Business as defined in this Schedule 3 and which is used in relation to a business of the parties other than the Extended Benelux MB Divestment Business.

SCHEDULE 4

The RB Divestment Business

1. The RB Divestment Business as operated to date has the following legal and functional structure:

The RB Divestment Business is operated within Georgia-Pacific GB Ltd for the UK. However, at closing of the Transaction, the business will transfer to SCA Hygiene Products Tissue Ltd for the UK as part of the transfer of the total GPE business in the UK/Ireland to SCA. These new companies have recently been formed.

2. Following paragraph 4 of these Commitments, the Divestment Business includes, but is not limited to:

a) the following main tangible assets:

The [...] mill, which includes the land and buildings, the paper machine (capacity 50,000 tonnes), four TP converting lines with capacity of 50,000 tonnes, the fixtures and fittings and IT equipment.

An HHT converting line (Time) currently at the [...] site ([...]).

At the option of the Purchaser, the Alphaflex TP converting line at the [...] ([...]).

b) the following main intangible assets:

Assignment of SCA's licence agreement for the eTAD paper making process.

c) the following main licences, permits and authorisations:

SCA will use its best efforts to transfer all licences, permits and authorisations associated with the [...] facility to the extent they are assignable.

d) the following main contracts, agreements, leases, commitments and understandings:

SCA will use its best efforts to transfer all customer contracts relating exclusively or predominantly to GPE's TP and HHT retailer brand supply in the UK and Ireland. SCA will make best efforts to transfer the benefits of the existing GPE TP and HHT retailer brand contracts in the UK and Ireland to the Purchaser to the extent they are assignable.

SCA will use its best efforts to transfer all other contracts, agreements, leases, commitments and understandings relating to the operations of the [...] facility to the extent they are assignable.

e) the following customer, credit and other records:

All customer accounts, orders, and credit records relating exclusively or predominantly to the manufacture and sale by GPE of TP and HHT retailer brands in the UK and Ireland.

f) the following Personnel:

The Parties will make best efforts to transfer the following Personnel to the Purchaser, provided always that the Parties may not legally be able to require a designated employee to transfer to a Purchaser. The transfer of Personnel will be subject to local employment regulations including those arising from the Acquired Rights Directive.

- The Hold Separate Manager;
- The mill manager at [...];
- The allocated RB Sales and Marketing organization in [...]: around [...] persons;
- The allocated Administrative organization in [...]: around [...] persons;
- The full production team of [...].

g) the following Key Personnel:

- The Hold Separate Manager;
- The mill manager at [...].

A proposed organization chart for the retailer branded business is attached at **Appendix 4**.

h) the arrangements for the supply with the following products or services by SCA or Affiliated Undertakings for a transitional period after Closing:

To the extent required by the Purchaser:

- (a) Supply of additional parent reel requirements (conventional) [...].
- (b) Other transitional supply/service arrangements for up [...].

3. The Divestment Business shall not include:

- (a) The business and resources currently in [...] which have been allocated to the UK MB Divestment Business as described in Schedule 1 or the Extended Benelux MB Divestment Business as described in Schedule 3.
- (b) Accounts payable and receivable.
- (c) Any other asset not part of the RB Divestment Business as defined in this Schedule 4 and which is used in relation to a business of the parties other than the RB Divestment Business.

SCHEDULE 5

The SW Divestment Business

1. The SW Business as operated to date has the following legal and functional structure:

The [...] mill is operated as part of the legal entity of SCA Hygiene Products AS, Oslo. Sales of SCA retailer branded products produced in [...] are managed by the Nordic sales organization of SCA located in Gothenburg and Oslo. Retailer branded sales in the other Nordic countries are made from the SCA legal entities in those countries.

The GPE retailer branded products sold in Sweden are currently produced at the [...] mill [...]. Sales of GPE's retailer branded products in Sweden are managed from the legal company Georgia Pacific Nordic AB.

2. Following paragraph 4 of these Commitments, the Divestment Business includes, but is not limited to:

(a) the following main tangible assets:

The [...] mill which includes:

- the land and the buildings;
- one conventional paper machine with a capacity of [...] tonnes;
- one deinking facility;
- two Perini converting lines: one Delta (swing) line with a capacity of [...] tonnes and one Sincro line with a capacity of [...] tonnes;
- the fixtures and fittings; and
- IT equipment.

The GPE TP converting line from [...] currently dedicated to producing [...] TP volumes for Sweden ([...]) with a capacity of [...] tonnes.

(b) the following main intangible assets:

None.

(c) the following main licences, permits and authorisations

SCA will use its best efforts to transfer all licences, permits and authorisations associated with the [...] facility to the extent they are assignable.

(d) the following main contracts, agreements, leases, commitments and understandings:

SCA will use its best efforts to transfer all customer contracts relating exclusively or predominantly to GPE's TP and HHT retailer brand supply in Sweden. SCA will make best efforts to transfer the benefits of the existing GPE TP and HHT retailer

brand contracts in Sweden to the Purchaser to the extent they are assignable.

SCA will use its best efforts to transfer all customer contracts relating exclusively or predominantly to the supply of retailer brand products from [...]. SCA will make best efforts to transfer the benefits of the retailer brand products from [...] to the Purchaser to the extent they are assignable.

SCA will use its best efforts to transfer all other contracts, agreements, leases, commitments and understandings relating to the operations of the [...] facility to the extent they are assignable.

(e) the following customer, credit and other records:

All customer accounts, orders, and credit records relating exclusively or predominantly to the [...] facility, except in relation to parent reel and AFH sales. All customer accounts, orders, and credit records relating exclusively or predominantly to GPE's retailer brand business in Sweden.

(f) the following Personnel:

The Parties will make best efforts to transfer the following Personnel to the Purchaser, provided always that the Parties may not legally be able to require a designated employee to transfer to a Purchaser. The transfer of Personnel will be subject to local employment regulations including those arising from the Acquired Rights Directive.

Within this organization, SCA will offer:

- [...] sales person from SCA's existing sales organization in Norway;
- [...] sales person from GPE's existing sales organization in Sweden;
- [...] sales admin/customer service will be arranged by SCA as these functions are currently integrated in other locations of the companies;
- An organization for HR, IT, Finance, Controlling, and General Administration to be based at the [...] mill.

(g) the following Key Personnel:

- Hold Separate Manager
- [...] mill manager

A proposed organization chart for the retailer branded business is attached at **Appendix 5**.

(h) the arrangements for the supply with the following products or services by SCA or Affiliated Undertakings for a transitional period after Closing:

To the extent required by the Purchaser:

- (a) Supply of finished products meeting the [...] product specifications for its current RB contracts with GPE, either from GPE [...] or another facility, [...].

- (b) Supply of parent reel requirements [...].
- (c) Other transitional supply/service arrangements for up to [...].

3. The Divestment Business shall not include:

- a) Existing contracts for parent reel sales from [...] ¹⁵⁷;
- b) Current AFH sales from [...];
- c) SCA's retailer branded business other than for products manufactured in [...];
- d) Accounts payable and receivable;
- e) Any other asset not part of the SW Divestment Business as defined in this Schedule 5 and which is used in relation to a business of the parties other than the SW Divestment Business.

Appendix 1 – Appendix 5

[...]

¹⁵⁷ SCA would however be prepared to transfer the benefit of these contracts to the Purchaser if requested by the Purchaser.